WINTER 2006 $ 6.50

CITY JOURNAL

Brian C. Anderson

Muzzling the New Media

Heather Mac Donald

This Is the Legal Mainstream?

Kay S. Hymowitz

Marriage and Caste

School choice works. Student Sponsor Partners helped prove it.

With the support of his sponsor and Student Sponsor Partners, John Kalala graduated from a private high school in 2001 and will graduate from Williams College in 2005.

"Before there was an official school choice movement in this country, Peter Flanigan created his own private voucher program in New York City. Student Sponsor Partners has saved thousands of needy kids from Gotham's failing public schools and given them a chance to improve their lives.

SSP became the model for dozens of similar programs across the country, and together they created the base for the school choice movement—the nation's new civil rights struggle.

Historians will some day recognize Flanigan's initiative as one of the most creative and effective acts of private philanthropy of the 20th century."

—Sol Stern, author of *Breaking Free: Public School Lessons and the Imperative of School Choice*

SSP works with over 1,600 dedicated sponsors who give both their time and money to help at-risk New York City students pursue a quality education. Now more than ever, SSP needs your help to support its vital mission.

To make a gift or learn more about SSP, please contact us at:

Student Sponsor Partners
21 East 40th Street, Suite 1601
New York, NY 10011
(212) 986-9575
www.sspnyc.org

STUDENT
SPONSOR
PARTNERS

CITY
JOURNAL

Published by the Manhattan Institute
Winter 2006 Volume 16, Number 1

Editor
Myron Magnet

Senior Editor
Brian C. Anderson

Contributing Editors
William Andrews
Michael Knox Beran
Theodore Dalrymple
Nicole Gelinas
Victor Davis Hanson
Howard Husock
Kay S. Hymowitz
Stefan Kanfer
Heather Mac Donald
Steven Malanga
Richard E. Morgan
Peter Reinharz
Wendy Shalit
Harry Stein
Sol Stern
William J. Stern

Editorial Assistant
Benjamin A. Plotinsky

Art Director
Jerome Rufino

Picture Editor
Karen Marston

Publication Committee
William J. Bennett
Eugene D. Brody
Charles H. Brunie
Anthony P. Coles
Michael J. Fedak
Peter M. Flanigan
H. Dale Hemmerdinger
Roger Hertog
Steven Klinsky
Myron Magnet
Lawrence J. Mone
Peggy Noonan
James Piereson
Robert Rosenkranz
Nathan E. Saint-Amand
Paul E. Singer
Thomas J. Tisch
Dietrich Weismann
Byron Wien

Contents

Brian C. Anderson 16 **The Plot to Shush Rush and O'Reilly**
Talk radio, cable news, and the blogosphere freed U.S. political discourse. The Left wants to rein it in again.

Kay S. Hymowitz 29 **Marriage and Caste**
America's chief source of inequality? The Marriage Gap.

Nicole Gelinas 38 **Gotham Needs Wall Street; Does Wall Street Need Gotham?**
New York's leaders don't understand how precarious the city's prosperity is.

Steven Malanga 54 **What Bloomberg Could Still Accomplish**
The mayor needn't waste four more years.

Sol Stern 62 **City's Pupils Get More Hype than Hope**
Test scores show little payoff for mayoral control.

Steven Malanga 68 **Ronald Reagan's Unlikely Heir**
Ohio's Republican gubernatorial front-runner Ken Blackwell is "Jesse Jackson's worst nightmare."

Heather Mac Donald 78 ***This* Is the Legal Mainstream?**
Law school clinics are stuck in the sixties.

Robert P. George 90 **What Colleges Forget to Teach**
Higher education could heal itself by teaching civics—not race, class, and gender.

Howard Husock 96 **New Philanthropists Talk Left, Act Right**
Individual uplift, not social change, is their keynote.

Urbanities

Michael Knox Beran 104 **Was Liberalism's Philosopher-in-Chief a Conservative?**
The puzzling contradictions of Isaiah Berlin

Departments

5 **In Prospect**

6 **Soundings**
Transit Strike Lessons; Gotham's Congressmen vs. Gotham; Taking Cola to Court; . . . and other matters.

Theodore Dalrymple 116 **Oh, to be in England**
A Prophetic and Violent Masterpiece

124 **Letters**

127 **Contributors**

Theodore Dalrymple 128 **European Diarist**
Autos-da-fé

We'll let our readers tell you why they never miss an issue.

Rudolph Giuliani

“*City Journal* has provided a forum for some of our city's—and our nation's—most incisive thinkers, whose writings have enriched our public discourse and helped shape public policy. In the pages of *City Journal*, theorists and practitioners meet, and new approaches to governance emerge. I look forward to many more years of informative, provocative reading.”

Tom Wolfe

“*City Journal* is the great Fool Killer in the arena of urban policy. It's more than sharp and penetrating. It's a joy to read.”

George Will

“*City Journal* is consistently the most stimulating source of reporting and analysis concerning the nation's urban problems.”

Bill Moyers

“Even when I disagree with *City Journal*, I dare not ignore it.”

Peggy Noonan

“*City Journal* is the best magazine in America.”

Order now, at our **subscription price** of $23.00/yr. (four issues)—a 10% **savings** off the newsstand price. **Call (800) 562-1973.**

CITY JOURNAL, SUBSCRIPTION DEPARTMENT, P.O. BOX 3000, DENVILLE, NJ 07834

NAME

ADDRESS

CITY, STATE, ZIP

○ $23.00 for one year (4 quarterly issues) ○ $42.00 for two years (8 quarterly issues)

○ Payment enclosed ○ Please bill me

"The journal that saved the city."

—The Public Interest

In Prospect

"I knew her before she was a virgin," Oscar Levant famously said of Hollywood's girl next door, Doris Day. One can't avoid the same thought regarding Senator John McCain's snow-white purity about campaign-finance reform. His effort to wipe off any taint from his (apparently peripheral) involvement in the 1987 Keating Five influence-peddling scandal seems as if he doth protest too much—as if he hopes we'll believe that "the system is to blame" for any politician's wrongdoing, rather than the choices of the politician himself. And so we have the McCain-Feingold campaign-finance reform, not only a thoroughly unconstitutional limitation of free speech but also a utopian effort to exorcise baseness and self-interest from politics that would have made the Founders snicker.

As Brian C. Anderson explains in the eye-opening "The Plot to Shush Rush and O'Reilly" (page 16), campaign-finance laws, especially McCain-Feingold, are now having a malign unintended consequence, as Democrats wield them to try to muzzle the hugely influential new media world of talk radio, cable-TV news, and the blogosphere. In very short order, these outlets have ended the monopoly on U.S. political discourse that the liberal mainstream media, headed by CBS News and the *New York Times*, so long enjoyed. Now conservative views get an equal hearing, with tremendous political consequences, possibly including George W. Bush's reelection. Apoplectic at its loss of power, the Left, rather than trying to debate these new media, is trying to smother them, in such a flagrant attempt to suppress free speech as would make the Founders weep.

If a crusading politician like McCain really wanted to take on the country's deepest political corruption, he'd look to the antidemocratic stranglehold that the public-sector unions and their allies—the new political machines—have over state and local government, which have become mere engines for fleecing the taxpayers. Steven Malanga has analyzed this new development in the *City Journal* stories that make up his influential book, *The New New Left*. In "What Bloomberg Could Still Accomplish," on page 54, he takes up the theme again, in the context of New York City, whose billionaire mayor, despite owing the unions nothing, nevertheless shied away from confronting them in his first term, out of a deep dislike of conflict. That failure has limited his freedom of action in his second term, now commencing, because the cost of so many overpaid public "servants" threatens big budget deficits out ahead. Even so, Malanga suggests some low-conflict ways Bloomberg can begin to rein in some of these costs during the next four years, a move crucial for the city's future. It's especially critical, as Nicole Gelinas explains on page 38, because Gotham has become ever more dependent on Wall Street, its premier industry, just when Wall Street is less and less dependent on New York. The city's high costs have already driven much financial-industry employment out of town, and there's a limit to how big a premium what's left of the industry will pay to stay here.

State and local governments used to make an impassioned case for the moral necessity of shaking down the taxpayers, but they've increasingly lost confidence in their redistributionist, "social justice" rationale. A good thing, too; for, as Kay S. Hymowitz points out in "Marriage and Caste," on page 29, though there really are two Americas, one rich and one poor, it's not because of any economic or racial injustice. It's because children born and raised in married, two-parent families are on average much more likely to succeed than children brought up by divorced or never-married mothers. Cultural renewal, not social services, is what's needed to promote prosperity for all—the American version of equality.

Reading Michael Knox Beran's profound analysis of Isaiah Berlin's thought, "Was Liberalism's Philosopher-in-Chief a Conservative?" (page 104), makes one realize just how much genius went into the construction of the left-liberal worldview that caused so much damage to social policy and cultural values over so many years. With that failure in mind, it's hard to disagree with Robert P. George's eloquent plea, in "What Colleges Forget to Teach" (page 90), to bring back the study of the Founders, in all their neglected wisdom and profundity.

Soundings

Transit Strike Lessons

The public-employee shakedown of taxpayers can't go on.

"You don't benefit from illegal acts," Governor George Pataki sternly lectured Gotham's transit union during last month's Christmas-week subway and bus strike. "You can't walk [off the job] and talk [at the negotiating table] at the same time." The governor sounded tough, but in the end the Transport Workers Union Local 100 has benefited from its defiance of state law and from its willful crippling of New York City's economy at the holiday season's height.

The starkest example of how the union wins is pensions. The state-run Metropolitan Transportation Authority, which governs the city's public transportation system (and is ultimately Pataki's responsibility), insisted early on in negotiations that it would not sign a contract until the TWU let it hike the retirement age for new hires from an absurdly munificent 55 to a still-generous 62. But to end the strike, the MTA backed off its demand, leaving workers' pensions alone.

Further, even after paying hefty fines for breaking the state's Taylor Law, and after making a first-time-ever contribution to his own health insurance, the average transit worker is out only $140 a year under the contract, thanks to the sweetened wage package that the MTA offered after the union threatened to strike in earnest. This is a small price to pay to save seven years of rich retirement income. And most shocking: if the state legislature and Pataki sign off on it, the MTA will throw in a post-strike bonus of up to $10,000 or so each to about half of the workers, paying them back for pension contributions they made long ago under a less generous pension regime. The bonus, coupled with the MTA's approval of a better health-care package for some retirees too young for Medicare, shows that crime—an illegal strike—can pay in New York State.

In letting transit workers return to work and TWU leaders return to the negotiating table as if nothing had happened, Pataki also lost on a much grander scale. New York's unions now know that they can defy the public and win. What municipal union will give an inch now on the key issues of guaranteed pensions and early retirement, even for new employees?

Despite the TWU's token concession to the MTA on health care, the union, the authority, and Pataki have therefore further cemented New York's completely unsustainable levels of pay and benefits for municipal workers. Transit workers today can retire at 55 at half pay after 25 years and get annual cost-of-living adjustments on pension payments for the rest of their lives. Most other state and local workers enjoy similar arrangements. Cops and firefighters can retire even earlier, at 50.

Such benefits, needless to say, far outstrip those of today's private-sector workers, who typically pay 10 to 20 percent of their health-care premiums, retire in their sixties, and increasingly participate in defined-contribution pension plans, such as 401(k)s, to which their employers sometimes contribute, but only while they are working. Their employers have no obligation after they retire.

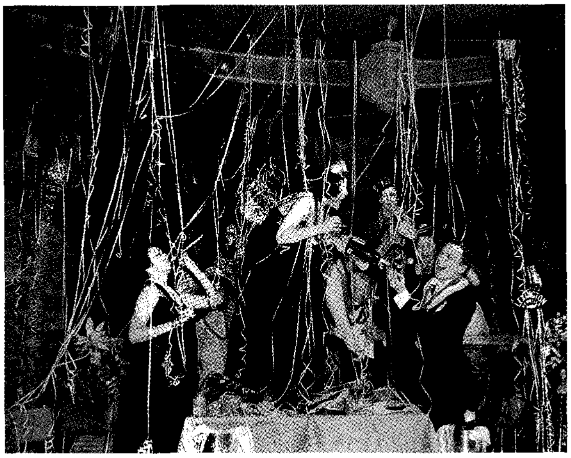
These obese public-sector benefits have strained government budgets throughout the state to the breaking point. The MTA, whose spending on pensions has tripled in three years, faces a staggering $1.75 billion in unfunded pension liabilities. New York City has seen its pension and benefits costs soar nearly 70 percent since 2002, to nearly $9 billion. These costs now account for about one-fourth of city-funded spending. The increase soaked up all of the added revenues the city collected by raising property taxes in 2003.

Public-sector unions have spent 50 years accumulating the power that has won these lavish benefits. Workers often struck for better pay and benefits in the early days of public-sector unionization. Today, though, there's less need for them to strike, since they can flex muscle at the ballot box—threatening legislators who oppose their demands. In Albany, both the Democrat-controlled state assembly and the Republican state senate routinely do what the unions ask, and it's the legislature, not local governments or the MTA, that has granted public employees many of their benefits through special legislation.

In the 2005 legislative session, for instance, lawmakers passed 46 bills making state worker pensions and benefits plusher. The projected annual cost: $100 million. One startling example: the legislature voted *unanimously* to lower the retirement age for transit workers to 50, even as the MTA was preparing to ask in its next negotiating round that the age rise to 62. Governor Pataki vetoed this bill, but he has signed a number of pension sweeteners into law, including 2000 legislation that shrank the contributions that state employees had to make to their pension funds. The law passed even as the stock market tanked and assets in the state's pension system fell. (Taxpayers are on the hook for any market shortfalls.)

While over 30 years of gubernatorial and state legislative complicity has brought New York to this budget-busting point, the transit strike usefully shone a spotlight on oversize public-employee pension and benefits packages, and on the power and arrogance of public unions. That public exposure provides perhaps the first real opportunity for reform in decades, since 2006 is a gubernatorial election year and reform of Albany is shaping up as a major theme (one poll found only 25 percent of New Yorkers satisfied with state government). An aggressive candidate willing to take on Albany and the public-sector unions could find an enthusiastic audience.

The putative leader in the gubernatorial race, Democrat Eliot Spitzer, won few kudos during the strike. Attorney General Spitzer did little more than go through the motions of his office, seeking injunctions against the strikers for violating the law, but otherwise—uncharacteristically—shunning headlines by avoiding real confrontation or debate over the job action and the issues surrounding it. Spitzer has made his name fighting private-sector corruption, but the strike reminded everyone that he has not built much of a reputation for taking on public-sector special interests. By contrast, the one Democrat likely to challenge him for the gubernatorial nod, Nassau Executive Thomas Suozzi, has built his profile largely on helping to clean up his own county government and on his willingness to tackle Albany's special interests, going so far as to try to defeat incumbent state legislators in his own party whom he believed too beholden to Albany interests. Though Spitzer has much higher name recognition than Suozzi, the attorney general's recent missteps, including losing a major courtroom battle and allegedly bullying a pillar of New York's business community, have emboldened Suozzi to make a challenge that could bring Albany reform to the fore in the Democratic primary.



AP WIDE WORLD PHOTOS

The strike also should be a lesson to the state's GOP that its only chance to retain the governorship is to find a candidate who rejects the union-friendly policies of the state senate and of Pataki and instead runs on a strong platform of cleaning up Albany. Former Massachusetts governor William Weld, contemplating a run for New York governor, cannily slammed Spitzer's reticence over the strike. The other candidates now seeking the GOP nod—former assembly minority leader John Faso and former secretary of state Randy Daniels—are also intimately familiar with how special interests rule Albany. They should run tough campaigns based on the same themes.

Voters looking for real action should pay attention to what the candidates for governor say on two key issues. On pension reform, the MTA was strategically correct in wanting to reduce new employee pensions, but it doesn't actually need union permission to change pension benefits for future workers—all it needs is a change in state law, since the state legislature governs pension benefits for all New York public-sector employees.

Voters thus should look for a gubernatorial candidate to pledge that he'll immediately take steps to reform pensions for *all* state and local government workers—by pushing such top-down reforms through the legislature. Of course, a candidate serious about reform should tell the voters that he can't do it without the support of Senate

Majority Leader Joe Bruno and State Assembly Speaker Sheldon Silver, both of whom must run for reelection next November.

The strike also highlights the need for top-down reform of New York State's unaccountable public authorities, with the first in line being the vital MTA. Pataki has already made the next governor's job harder in this regard. He has pushed his appointees to hike MTA debt levels so much, for instance, that future governors will have limited flexibility to rein in fixed costs. But the next governor can vow to sign legislation that would require all public authorities, including the MTA, to adhere to strict debt ceilings. The new governor could also pledge to reform the MTA by shrinking it—cutting out hundreds of expensive middle managers and working with the city to contract out MTA bus operations to private operators under strict guidelines, as in other cities worldwide.

The next governor has his work cut out. But he's got to do it. As tensions mount between the public and private sector over unaffordable pay and pensions, the TWU strike likely will appear not as an aberration but as the onset of a difficult era of confrontation and—let's hope—needed reform. —*Nicole Gelinas and Steven Malanga*

Gotham's Congressmen vs. Gotham

Federal investment tax cuts help New York and should be renewed.

Nothing has fueled New York City's post-9/11 financial recovery more than the dividend and capital-gains tax cuts that Congress passed as part of its overall 2003 tax-reduction package. The cuts ignited the stock market, rocketing Wall Street profits and salaries upward and filling city coffers with unanticipated revenues. But those reductions will soon expire, and sentiment has grown in Washington to let them die.

In December, the House of Representatives only narrowly re-authorized the cuts, but the Senate's proposed extension of the 2003 tax package actually excludes them. If the Senate version prevails, the ensuing rise in investment taxation rates will stall Wall Street's recovery and constitute a serious blow to Gotham's economy and to its budget, which has come to rely disproportionately on Wall Street tax revenues to support soaring spending on social programs, Medicaid, and public-employee costs.

As in 2003, New York City's congressional delegation is on the wrong side of the tax-cut issue. All of the city's Democratic representatives, as well as New York State's two senators, joined the majority of their party in voting against re-authorizing the investment tax cuts, because—in the Dem story line—they chiefly benefit the rich.

City reps should take a closer look at recent history. Mayor Michael Bloomberg's fiscal plan for New York, released in January 2003, projected "an unprecedented decline in wage income" for the city because of Wall Street's then-18-month slump. Securities-industry profits had plummeted by two-thirds since 2001. The shrinking income would mean some $1.2 billion less in tax revenues, the city projected.

But that spring, as Congress began debating the tax package, the markets—anticipating investment tax cuts—took off. And they kept rising after the president signed the reductions into law. The Standard and Poor's 500 increased 22 percent for the year. Wall Street earned $17 billion—$10 billion more than the city projected. Tax collections, instead of declining, improved by more than $1 billion for 2003 alone. Wall Street's revival buoyed corporate tax revenue, as well as personal income-tax collections and even the realty-transfer tax, which gained from a revved-up real-estate market. Since 2003, city tax revenue has continued to swell. In the third quarter of 2005, personal income-tax collections were up nearly 9 percent over the previous year, thanks to a big jump in interest and capital-gains income.

None of this is coincidental. Previous capital-gains tax cuts, in 1978 and 1997, similarly energized Wall Street and helped the city. In the three years after the 1997 reduction, for instance, Wall Street firms pulled in $45 billion in profits and created 25,000 new jobs. And it isn't just the rich who benefit from such cuts, whatever the Democrats say. About six in ten tax filers who report dividend income earn less than $75,000 a year.

All this should be enough to get city congressmen beating the drums in the halls of the U.S. Capitol for a renewal of the 2003 package instead of parroting the Democratic Party's anti-Gotham, class-warfare line. —*Steven Malanga*

Taking Cola to Court

If you're fat, blame Coke and Pepsi.

Get ready for the next mass-tort crusade: protecting our kids from the ravages of Big Cola. According to news reports, a group of lawyers is gearing up to file lawsuits that will seek to blame Coke, Pepsi, & Co. for obesity, tooth decay, and other childhood health ailments. An article in the *Boston Globe* magazine has already hailed what it calls a "national legal movement to make soft drinks the next tobacco." Instead of tar and nicotine, we'll be hearing about corn sweeteners and caffeine; maybe Dr. Pepper can stand in as the new Joe Camel.

Ridiculous? More like inevitable. For some time, a noisy campaign has been under way to portray the food and beverage industry as the villain in America's ongoing battle with the waistline. Without the snack hucksters' machinations, it seems, we'd all eat raw bell peppers and be reed-thin. Backed by "progressive" foundations, nutrition advocates in and outside the universities now regularly appear in the press, demanding a national obesity policy aimed at changing our collective diet, by force of law if necessary—or quite possibly by force of litigation. As one advocate, Michael Jacobson of the Center for Science in the Public Interest, put it: "If someone is saying that a 64-ounce soda at 7-Eleven contributed to obesity, that person should have his day in court."

That brings us to Northeastern University law prof Richard Daynard, point man in the forthcoming courtroom onslaught against fizzy drinks. Long quoted in the press as a cheerleader for tobacco lawsuits, Daynard has now set out to assemble a legal strike force to file actions blaming big business for obesity. He wants to duplicate the success of the tobacco campaign, whose strategies included invoking "the children" at every turn, portraying smokers as passive addicts, and—on a more practical level—launching scores of suits on novel legal theories in hopes that one would stick. The litigation culminated in the giant 1998 settlement that saw cigarette makers agree to alter marketing practices, pay oodles to state governments (financed by hiking cigarette prices), and—not incidentally—fork over upward of $10 billion to the lawyers who'd organized the suits.

BETTMANN/CORBIS (3)

The first of the new soft-drink suits—set for filing in Massachusetts over the sale of soda in school vending machines—has been delayed, for a comical reason. Daynard says that it's taken longer than expected to line up the right Bay State family to serve as client, even though his group has placed newspaper ads asking parents to step forward. (Shouldn't he be pretending, at least, that aggrieved victims of Big Cola are pounding on his door, eager to sue?) But such difficulties are temporary: at some point, the plump plaintiff will be safely on board, and it'll be off to court.

So should we laugh at these lawsuits? Take them seriously? The case for laughing is clear enough. After all, Round One of this kind of litigation—the suits by obese customers against McDonald's and other burger chains—drew derision from the general public, an overwhelming 89 percent of whom in one poll opposed letting people sue over fattening foodstuffs.

This time around, though, the lawyers have selected targets more shrewdly. Unlike many other ideas floated by nutrition activists, that of restricting soda sales in schools has proven popular with the general public, and politicians have taken notice. Most big-city school systems have banned soda, as has California in public schools statewide, and other states are likely to follow—all without anyone needing to sue. You might even suspect that the lawyers are positioning themselves to "front-run" a social trend already in progress and then later take credit (and claim fees) when it advances further.

The bans might not make much difference in the problem of childhood obesity, it's worth noting. Most soda (99 percent) sells outside schools. Fruit juice (a typical replacement) is itself anything but slenderizing, moreover, especially compared with the diet soft drinks popular among teens.

Still, the lawyers might well coax a settlement out of the soft-drink firms, the terms of which wouldn't necessarily depend on the strength of the actual legal case. The real leverage that this kind of litigation affords, after all, often lies in the threat of obtaining, under court order, reams of internal documents from the opponents' files. The next step is for the lawyers to pluck selected bits out of context and feed them to a cooperative press, which then casts them in the worst possible light. It happens that two huge companies dominate the soft-drink industry, both extremely sensitive about their reputations, which are vulnerable to damage, both at home and abroad, should articles begin appearing regularly in the U.S. media vilifying their marketing practices.

Nor would Coke and Pepsi necessarily be averse to granting some of their critics' demands. In fact, a settlement that let the two cola giants reduce the vast sums they spend on marketing and promoting might be in their mutual interest, conferring a collusive benefit otherwise unobtainable without violating antitrust laws. Some economists believe that the various curbs that the tobacco settlement placed on cigarette ads have actually boosted tobacco firms' profitability.

So maybe there'll be some money for Daynard after all. And it'll be hard for him to pretend, this time around, that he isn't interested in it. Back in the heyday of tobacco litigation, hundreds of news reports portrayed Daynard as an academic well-wisher of the suits, breathing not a word about his monetary stake in them. After Richard Scruggs, Ronald Motley, and other tort kingpins brokered the $246 billion settlement with the states, however, Daynard popped up to claim that he had an oral agreement with the lawyers that entitled him to 5 percent of their fee haul—a claim that, if accepted, would have brought him a cool $150 million or more. No such luck: Scruggs and Motley said they'd made no promise of the sort. The dispute, later settled on private terms, got rather heated. Scruggs deemed Daynard "a bit more mercenary than people think he is," while Motley described as "stupefying" his claim to have masterminded the litigation.

Some reporters felt betrayed at learning after the fact of the professor's undisclosed role as a bettor in the litigation horse race he was handicapping. But it didn't seem to bother the higher-ups at Northeastern, who gave the university's imprimatur when Daynard launched his more recent obesity-suit venture. In fact, a second Boston-area university, Tufts, has also sponsored his litigation-promoting Public Health Advocacy Institute.

Who needs Coke and Pepsi to bring commercialism to the schools, anyway? It looks as if Daynard is doing a decent job of that all by himself.

—Walter Olson

Curbing Eminent Domain

The Supremes said that states can still do it, but it's easier said than done.

In last June's *Kelo* "eminent-domain" decision, the Supreme Court deemed constitutional the government taking of private land for economic development. But in his opinion for the Court, Justice John Paul Stevens noted that if states wanted to ban the practice, they could pass laws against it.

Easier said than done. In California, where some 380 municipalities have created redevelopment agencies with eminent-domain powers, enabling them, among other things, to take private land and give it to another private owner, the influential California Redevelopment Association and the state's league of municipalities worked successfully this summer to block a law that would have limited the use of eminent domain to such traditional public projects as highways. The legislation never escaped committee. Nor is what happened in California unusual. In *Kelo*'s wake, dozens of state lawmakers across the country promised to introduce bills restricting eminent domain. But most of the proposed legislation has wound up stuck in committee, stalled in hearings, or tabled while officials "study" the issue.

Hope is not lost in California, however. Eminent-domain foes, including Republican state senator Tom McClintock and the Howard Jarvis Taxpayers Association, are gathering signatures for a November 2006 ballot initiative that would amend California's constitution to include the limits fruitlessly sought by this summer's stalled legislation. Initiative backers include the Municipal Officials for Redevelopment Reform (MORR), a California organization of elected officials and private citizens seeking to reduce the massive power of state redevelopment agencies. Led by Orange County Supervisor Chris Norby, MORR notes that the redevelopment agencies consume 10 percent of all state tax dollars, have racked up some $56 billion in debt, and have used eminent domain to gobble up privately owned land for hotels, vast car dealerships, and big-box retailers, including a Costco warehouse store built on a site taken from a church in Cypress. Norby's group dubs the redevelopment agencies California's "unknown government." Not only can the state create them without direct voter approval; the agencies in turn can incur debt without a thumbs-up from voters.

Though California's current eminent-domain law, like those of many states, limits takings to "blighted" areas, its language is so vague on what constitutes blight that creative redevelopment authorities have designated more than 1 million Golden State acres as eligible for seizure—including land in some flourishing communities. Most recently, for instance, the San Diego Model School Development Agency pushed to grab 188 homes in the thriving City Heights neighborhood, because the agency wanted to build 509 town houses, condos, and apartments on the land.

Government ostensibly takes the private property to boost economic development and buoy tax rolls. But a 1998 study by the Public Policy Institute of California found that communities in the state that have engaged in extensive government-sponsored redevelopment have reaped no real economic benefits compared with municipalities that haven't done so. Government officials, it turns out, often misread the marketplace and promoted projects that failed to deliver the promised payback. "The widespread abuse of eminent domain has left shattered neighborhoods, half-empty malls," and empty car-sales lots, Norby says.

Polls show that 90 percent of Californians favor curtailing eminent-domain powers. Still, many municipal officials in the state oppose the constitutional amendment, as does the Democrat-controlled legislature. Measure proponents anticipate that, to defeat the amendment, legislators and municipal officials will enlist the aid of well-funded real-estate and development groups, as well as businesses like big-box stores and hotels that frequently win prime sites from local governments through eminent domain.

Much is at stake. A successful ballot initiative in the nation's largest state, where use and abuse of eminent domain for economic development have become so widespread, could jump-start similar legislation around the country. —*Steven Malanga*

Less *Liberté* Means Less *Egalité*

Economic liberty undercuts prejudice—not that the French notice.

Why do people—or at least some people—not learn from experience? Because experience rarely teaches its lessons directly but instead requires interpretation through the filter of preconceived theories, prejudices, and desires. Where these are invincible, facts are weak things. Consider the French daily newspaper *Libération*, founded by Jean-Paul Sartre.

Libération has published several recent articles about hundreds of thousands of young Frenchmen decamping to Britain to seek employment. Britain's relatively flexible labor market (a symptom of the economic liberalism that *Libération* abhors and that the British government is doing its best to destroy) makes it easier for them to find work in the U.K. than in their native country.

The latest article suggests that racial discrimination in employment in Britain is weaker than it is in France. It tells the stories of well-qualified young French people of African or North African origin who could not find work in France for several years, but on crossing the Channel immediately were able to find responsible positions in accord with their abilities and even to start businesses a little later. They all said that discrimination is less evident in Britain than in France. And, making the point from a slightly different perspective, research in France shows that it is twice as hard for a Frenchman with a Muslim name to find work as for an equivalently qualified Frenchman with a French name.

But are the British paragons of tolerance? I doubt it.

What, then, is the difference? According to *Libération*, it is that Britain boasts anti-discrimination laws and a bureaucratic apparatus to enforce them: in other words, minorities have it better in Britain than in France because the state—in this respect—is more active. Thus, a bigger state (and more taxes to pay for its expansion) is the answer to France's problem.

This explanation is exactly wrong. It overlooks entirely the role (admittedly relative and on the decline) of economic freedom in Britain. Where employers must compete for labor, they dare not disregard ability and willingness to work, whatever private prejudices they might harbor. In *dirigiste* France, by contrast, the young need "*piston*"—connections with powerful people—to find work: and prejudice can find practical expression where grace and favor allocate employment opportunities.

Where an economy is open, prejudice is no bar to advancement. Where the regulation of a powerful central government grows excessive, the possibilities for social mobility shrink. But this lesson runs against the prejudices of *Libération*, and of the French intelligentsia generally. On the back page of the same edition of the newspaper, one found a eulogistic article consecrated to a radical young trade unionist who wants to defend the protections that the state extends to those already in work. The piece gave no hint that these protections might be other than beneficial to the country as a whole. —*Theodore Dalrymple*

Pest Politics

New York's bedbug resurgence might mean a comeback for DDT.

This year's big news for Africa might not be about Darfur or debt forgiveness, but instead about the alarming comeback of bedbugs in New York City, as the *New York Times* recently reported. To see what New York entomology has to do with Africa, turn the clock back a half-century. Americans and Europeans back then had to put up with bedbugs—tiny, irritating pests, nearly impossible to get rid of, that emerged nightly to feast on human blood. Bedbugs weren't really dangerous, but they were a nasty nuisance, leaving itchy welts wherever they fed. After World War II, the U.S. eradicated the bedbug plague, thanks to the highly effective pesticide DDT. Far more important, DDT also killed lice, which transmitted typhus, and mosquitoes, which transmitted malaria. Though some insects evolved to resist it, DDT freed the developed world from these lethal diseases, as well as from the inconvenience of bedbug bites.

The undeveloped world hasn't been so lucky. It's not that DDT is expensive (it isn't) but that USAID, the government agency that leads our efforts to fight malaria overseas, doesn't pay for DDT spraying. "From a purely technical point of view in terms of effective methods of addressing malaria," the agency claims, "USAID and others have not seen DDT as a high priority component of malaria programs." It's a hard statement to swallow, considering how effective DDT was at killing malarial mosquitoes here.

It's much likelier that USAID refuses to fund DDT spraying out of environmental worries. Environmentalists, after all—inspired by Rachel Carson's extremely influential *Silent Spring*, which made the alarmist case against DDT in

Soundings

1962—have managed to get the pesticide banned in the U.S., calling it, among other things, one of "the world's deadliest poisons." That's an overstatement, to say the least. Certainly, DDT is deadly to bugs. There's some evidence, too, that it may affect the reproduction of certain birds, whose eggs may develop thinner shells from DDT exposure. But test after test has shown that DDT isn't dangerous to humans.

If only you could say the same about Greenpeace, the Sierra Club, and other environmentalist groups inflaming DDT fears. In Africa, where roughly 90 percent of the world's 2.5 million annual malaria deaths occur, might not concerns about avian reproduction take a backseat to concerns about human survival? In *Hamlet*, the Danish prince marvels that soldiers will risk death "even for an eggshell"—that being, presumably, the most worthless object Shakespeare could think of. Yet eggshells are why environmentalists are risking death—other people's, of course.

When their own comfort's at stake, though, you can bet that environmentalists won't be so squeamish. That's why New York's bedbug resurgence—occurring in luxury hotels and Park Avenue residences as well as in less ritzy neighborhoods—is good news for Africa. Manhattanites won't tolerate the DDT ban if it means being bitten at night, and they'll make that clear to Washington politicians, for whom the liberal Upper East Side is the country's top source of political contributions. If DDT makes a triumphant return to America, odds are that USAID will start funding it in Africa, too, no matter what environmentalists have said in the past. And that means a major victory over the bloodsucking parasites. I refer, of course, to the bedbugs and mosquitoes.

—Benjamin A. Plotinsky

HAPPY NEW YEAR

France vs. France

France's Muslim problem will only get worse.

In the wake of the L.A. riots, the French rushed to accuse the U.S. of racism—*les Américains* were incapable of dealing with their minorities fairly. It was always lynchings, beatings, violence *à la* Rodney King. And when *l'affaire Katrina* occurred, who was first to critique the U.S. for its shortcomings? Why, the French newspapers, *naturellement. Libération* was typical: the hurricane had "revealed America's weaknesses: its racial divisions, the poverty of those left behind by its society."

Such things, the French press haughtily implied, could never happen in the country of Voltaire, Hugo, and Proust. And then came the infamous night of October 27, 2005, when two Muslim teens fled a police identity check in a *banlieue*—a run-down Paris suburb called Clichy-sous-Bois. They scaled the wall of an electrical relay station and touched a transformer, which electrocuted them on the spot. Youths, mostly unemployed Muslims, heard the news and—as everyone now knows—rampaged. They burned cars, vandalized buildings, and pelted police with stones and bottles.

The violence spread to other *banlieues* outside Paris, and then to some 300 other French cities. Rifles went off, Molotov cocktails exploded, and people wound up burned and beaten, sometimes fatally. Cries of "Allahu Akbar" rang through the air, as did talk of turning Paris into "Baghdad-sur-Seine." An Islamic website informed readers, "The cops are petrified of us. Everything must burn." A young leader of the Arab European League spoke for many colleagues when he demanded that France allow Arab sections to govern themselves. "We reject integration when it leads to assimilation," he stated. "We are at home here, and whatever we consider our culture to be, also belongs to our chosen country. I'm in *my* country, not the country of the Westerners."

Before the riots literally burned themselves out four weeks later, more than a thousand vehicles had been destroyed, along with property worth millions of euros. Interior Minister Nicolas Sarkozy called the rioters "scum," but Prime Minister Dominique de Villepin, one of the most vitriolic detractors of the U.S. administration, rushed to correct his colleague: "Let's avoid stigmatizing areas." For his part, President Jacques Chirac imposed a state of emergency and then engaged in some extravagant soul-searching. In an "I-feel-your pain" speech, he condemned racism, declared, "we are all aware" of discrimination, and called for equal opportunities for the young.

Hélas, high-sounding phrases will not help France recover from the problem it faces in integrating its millions of young, welfare-dependent, and increasingly alienated Muslims. France's unemployment rate stands at about 10 percent, roughly twice the U.S. rate. The economy grows slowly—under 2 percent. Few new jobs are available for the angry and unskilled (except, of course, in the arts of destruction). Absent economic reform, the private sector is unlikely to create any jobs this year or next year or the ones after that.

Jean-Marie Le Pen, the fascist French politico, made an impressive showing against Chirac in the last election. He lost, but insisted that the pendulum would soon swing his way. It is already in motion. The man who thought that the Holocaust was just "a detail of history" has all sorts of planks in his platform, but his real issue is immigration. Appraising Muslim ghettos long before the riots, he noted, "Massive immigration has just begun. It is the biggest problem facing France, Europe, and probably the world. We risk being submerged."

Unless mainstream French politicians address that problem, conditions are ripe for Le Pen, and for others like him, to find enthusiastic audiences next time around. Meantime, the Islamic fuse grows shorter. Less than a month after the riots, in Clichy-sous-Bois, where the troubles had begun, French police seized illegal rifles, dynamite, and TNT from an Islamic militant group, said to have ties to al-Qaida's leader in Iraq.

Denis Boyles's recent book, *Vile France*, analyzed some troubling demographics. "Sometime this century," the author predicted, "France will become a Muslim state, at which time France's war with America will take an interesting turn." A preview of what could be in store was on display in the fall of 2005. All viewers had to do was click on their remotes and watch *la belle France*, no longer smug, in a heads-on battle with its future.

—Stefan Kanfer

Dangerous History

In Europe, the past continues to haunt the present.

History is an increasingly dangerous subject in Europe. Austrian authorities recently arrested historian and born-again Nazi David Irving for denying a genocide; Turkish writer Orhan Pamuk currently faces trial in his native land for asserting that there was one. The question is not which of them is right, but whether writers' opinions, morally odious or hurtful to national self-esteem as they might be, are the proper subject of criminal law.

While some things must not be said about history in some countries, other things must be said about it in yet others. The French National Assembly, for example, passed a law last February that required teachers to accentuate the positive achievements of French colonialism, especially in North Africa. No doubt it sought to encourage national pride among the disaffected young.

Instead, it sparked, predictably, an international crisis. President Jacques Chirac, who had earlier signed into law an official recognition by the French Republic of the Armenian genocide, sought to calm tempers by saying that the republic had no "official"—that is, orthodox and unquestionable—history: and then he suggested that a day be set aside each year to commemorate the victims of slavery.

History knows no final versions, of course, and it is no secret that most people seek in the past lessons for the present that accord with current interests and prejudices. But when governments try to impose versions of history upon their populations, and prosecute those who contradict the official line, it is fair to surmise that anxieties must lie close to the surface of national life.

Soundings

Like other European countries, France finds it difficult to fashion a new national identity now that its population is so ethnically and culturally heterogeneous. Its recent history has many dark episodes. A prominent French school of historical thought ceaselessly emphasizes those episodes—including colonial massacres in the very countries that have spawned mass immigration to France—and denies any achievement that might create pride in the country among the young. The temptation is thus strong to impose a more positive version of the past upon schoolchildren.

Austria, of course, forbids Holocaust denial, because its population denied for so long, and would still like to deny. This deliberate amnesia is precisely the preoccupation of the recent Austrian Nobel Prize winner for literature, Elfriede Jelinek. If the Austrians were immune from the temptations of Nazism, they would hardly have needed to pass a law against denial.

Turkey has long sought to minimize the scale and intent of the Armenian massacres. Pamuk's contentions undermine the moral legitimacy of all Turkish governments since the time of the massacres and suggest that Turkey can have no morally legitimate government until it makes a full admission. Such, of course, is the position of European countries that want to keep Turkey out of the European Union, but don't care the slightest about the Armenians.

When history is dangerous, the present is dangerous. *—Theodore Dalrymple*

The Empty Fanatic

The Belgian suicide bomber's embrace of Islamic terror may not be so hard to understand.

Watching Swiss television recently—for the first and possibly last time—I saw a report on the 38-year-old Belgian who blew herself up in Iraq recently, killing five policemen as well. She was the first white European suicide bomber.

Muriel Degauque, born and raised in Charleroi, was a child of ordinary working-class parents. The television underlined this point with lengthy shots of her dreary childhood neighborhood. Even a few seconds looking at it on a screen was almost enough to provoke an existential crisis.

Muriel Degauque's life was unremarkable, said the television commentary. She was average at school, and then worked, unskilled, in a bakery. A few people who knew her in childhood and early adulthood emphasized that she was an ordinary person—the last kind of person, in fact, to act in such an outrageous way.

There was nothing in her life out of the usual, the report added. True, she went through a period of sexual promiscuity and drug taking, but when she converted to Islam—cut to a Muslim area of Brussels—she gave up drugs and was faithful to her Moroccan husband. So really, the commentary concluded, the whole episode was mysterious and inexplicable.

But only in the sense that all human conduct is, in the last analysis, mysterious. Actually, the suicide bomber reminded me of the lost and bewildered young people whom various Christian sects would look for as they scoured our streets, trawling for recruits into their all-embracing communities. These communities happened to make lots of money for their founders but really did rescue some young people from the gutter.

The TV commentary made no connection between Muriel Degauque's promiscuity and drug abuse on the one hand and her subsequent conversion to a murderously puritanical form of Islam on the other (she wore the most extreme of veils). It requires little imagination to make such a connection, however, for one possible interpretation of her former life was that she sought to fill an inner void, a lack of purpose or interest, with mere sensation. Once the self-defeating nature of this effort was obvious to her—and nothing suggests that she lacked intelligence, despite her mediocre academic background—she became vulnerable to a "complete" answer to life's problems. Her death demonstrated, both to herself and to others, how deeply (or at least desperately) she believed in it.

Her problem—a lack of meaning in her life—is far from unique. Millions of people are in the same or similar position. That is why her story, bizarre as it is, has plunged Belgium into an existential gloom, and why the rest of Europe cannot afford to be complacent about it—or as emotionally unimaginative as Swiss television.

—Theodore Dalrymple

The Plot to Shush Rush and O'Reilly

Talk radio, cable news, and the blogosphere freed U.S. political discourse. The Left wants to rein it in again.

Brian C. Anderson

The rise of alternative media—political talk radio in the eighties, cable news in the nineties, and the blogosphere in the new millennium—has broken the liberal monopoly over news and opinion outlets. The Left understands acutely the implications of this revolution, blaming much of the Democratic Party's current electoral trouble on the influence of the new media's vigorous conservative voices. Instead of fighting back with ideas, however, today's liberals quietly, relentlessly, and illiberally are working to smother this flourishing universe of political discourse under a tangle of campaign-finance and media regulations. Their campaign represents the most sustained attack on free political speech in the United States since the 1798 Alien and Sedition Acts. Though Republicans have the most to lose in the short run, all Americans who care about our most fundamental rights and the civic health of

Illustrations by Arnold Roth

our democracy need to understand what's going on—and resist it.

The most imminent danger comes from campaign-finance rules, especially those spawned by the 2002 McCain-Feingold Campaign Reform Act. Republican maverick John McCain's co-sponsorship aside, the bill passed only because of overwhelming Dem support. It's easy to see why liberals have spearheaded the nation's three-decade experiment with campaign-finance regulation. Seeking to rid politics of "big-money corruption," election-law reforms obstruct the kinds of political speech—political ads and perhaps now the feisty editorializing of the new media—that escape the filter of the mainstream press and the academy, left-wing fiefdoms still regulation-free. Campaign-finance reform, notes columnist George Will, by steadily expanding "government's control of the political campaigns that decide who controls government," advances "liberalism's program of extending government supervision of life."

The irony of campaign-finance reform is that the "corruption" it targets seems not to exist in any widespread sense. Studies galore have found little or no significant influence of campaign contributions on legislators' votes. Ideological commitments, party positions, and constituents' wishes are what motivate the typical politician's actions in office. Aha! reformers will often riposte, the corruption is hidden, determining what Congress *doesn't* do—like enacting big gas taxes. But as Will notes, "that charge is impossible to refute by disproving a negative." Even so, such conspiracy-theory thinking is transforming election law into what journalist Jonathan Rauch calls "an engine of unlimited political regulation."

McCain-Feingold, the latest and scariest step down that slope, makes it a felony for corporations, nonprofit advocacy groups, and labor unions to run ads that criticize—or even name or show—members of Congress within 60 days of a federal election, when such quintessentially political speech might actually persuade voters. It forbids political parties from soliciting or spending "soft money" contributions to publicize the principles and ideas they stand for. Amending the already baffling campaign-finance rules from the seventies, McCain-Feingold's dizzying dos and don'ts, its detailed and onerous reporting requirements of funding sources—which require a dense 300-page book to lay out—have made running for office, contributing to a candidate or cause, or advocating without an attorney at hand unwise and potentially ruinous.

Not for nothing has Supreme Court Justice Clarence Thomas denounced McCain-Feingold's "unprecedented restrictions" as an "assault on the free exchange of ideas."

Campaign-finance reform has a squeaky-clean image, but the dirty truth is that this speech-throttling legislation is partly the result of a hoax perpetrated by a handful of liberal foundations, led by the venerable Pew Charitable Trusts. *New York Post* reporter Ryan Sager exposed the scam when he got hold of a 2004 videotape of former Pew official Sean Treglia telling a roomful of journalists and professors how Pew and other foundations spent years bankrolling various experts, ostensibly independent nonprofits (including the Center for Public Integrity and Democracy 21), and media outlets (NPR got $1.2 million for "news coverage of financial influence in political decision-making")—all aimed at fooling Washington into thinking that Americans were clamoring for reform, when in truth there was little public pressure to "clean up the system." "The target group for all this activity was 535 people in Washington," said Treglia matter-of-factly, referring to Congress. "The idea was to create an impression that a mass movement was afoot—that everywhere they looked, in academic institutions, in the business community, in religious groups, in ethnic groups, everywhere, people were talking about reform."

Treglia urged grantees to keep Pew's role hush-hush. "If Congress thought this was a Pew effort," he confided, "it'd be worthless. It'd be 20 million bucks thrown down the drain." At one point, late in the congressional debate over McCain-Feingold, "we had a scare," Treglia said. "George Will stumbled across a report we had done. . . . He started to reference the fact that Pew was playing a large role . . .

[and] that it was a liberal attempt to hoodwink Congress. . . . The good news, from my perspective, was that journalists . . . just didn't care and nobody followed up." The hoaxers—a conspiracy of eight left-wing foundations, including George Soros's Open Society Institute and the Ford Foundation—have actually spent $123 million trying to get other people's money out of politics since 1994, Sager reports—nearly 90 percent of the spending by the entire campaign-finance lobby over this period.

> **“McCain-Feingold is partly the result of a hoax perpetrated by a handful of liberal foundations.”**

The ultimate pipe dream of the reformers is a rigidly egalitarian society, where government makes sure that every individual's influence over politics is exactly the same, regardless of his wealth. Scrutinize the pronouncements of campaign-finance reform groups like the Pew-backed Democracy 21, and you'll see how the meaning of "corruption" morphs into "inequality of influence" in this sense. This notion of corruption—really a Marxoid opposition to inequality of wealth—would have horrified the Founding Fathers, who believed in private property with its attendant inequalities, and who trusted to the clash of factions to ensure that none oppressed the others. The Founders would have seen in the reformers' utopian schemes, in which the power of government makes all equally weak, the embodiment of tyranny.

To eradicate "corruption," leading theorists of campaign-finance reform, such as Ohio State University law professor (and former Ohio state solicitor) Edward Foley, Loyola law prof Richard Hasen, and radical redistributionist philosopher Ronald Dworkin, want to replace privately financed campaigns with a system in which government would guarantee "equal dollars per voter," as Foley puts it, perhaps by giving all Americans the same number of political "coupons," which they could then redeem on the political activities of their choice. This superpowerful government would ban all other political expenditures and require all political groups to get operating licenses from it, with stiff criminal penalties for violators. The experts have even started calling for draconian media restrictions to achieve their egalitarian aims. In Foley's view, the chilling of speech is "the necessary price we must pay in order to have an electoral system that guarantees equal opportunity for all." But when these experts pen law-review articles with titles like "Campaign Finance Laws and the Rupert Murdoch Problem," you know it isn't the *New York Times* or CBS News that they have in mind.

Campaign-finance reform now has the blogosphere in its crosshairs. When the Federal Election Commission wrote specific rules in 2002 to implement McCain-Feingold, it voted 4 to 2 to exempt the Web. After all, observed the majority of three Republicans and one Democrat (the agency divides its seats evenly between the two parties), Congress didn't list the Internet among the "public communications"—everything from television to roadside billboards—that the FEC should regulate. Further, "the Internet is virtually a limitless resource, where the speech of one person does not interfere with the speech of anyone else," reasoned Republican commissioner Michael Toner. "Whereas campaign finance regulation is meant to ensure that money in politics does not corrupt candidates or officeholders, or create the appearance thereof, such rationales cannot plausibly be applied to the Internet, where on-line activists can communicate about politics with millions of people at little or no cost."

But when the chief House architects of campaign-finance reform, joined by McCain and Feingold, sued—claiming that the Internet was one big "loophole" that allowed big money to keep on corrupting—a federal judge agreed, ordering the FEC to clamp down on Web politics. Then-commissioner Bradley Smith and the two other Republicans on the FEC couldn't persuade their Democratic colleagues to vote to appeal.

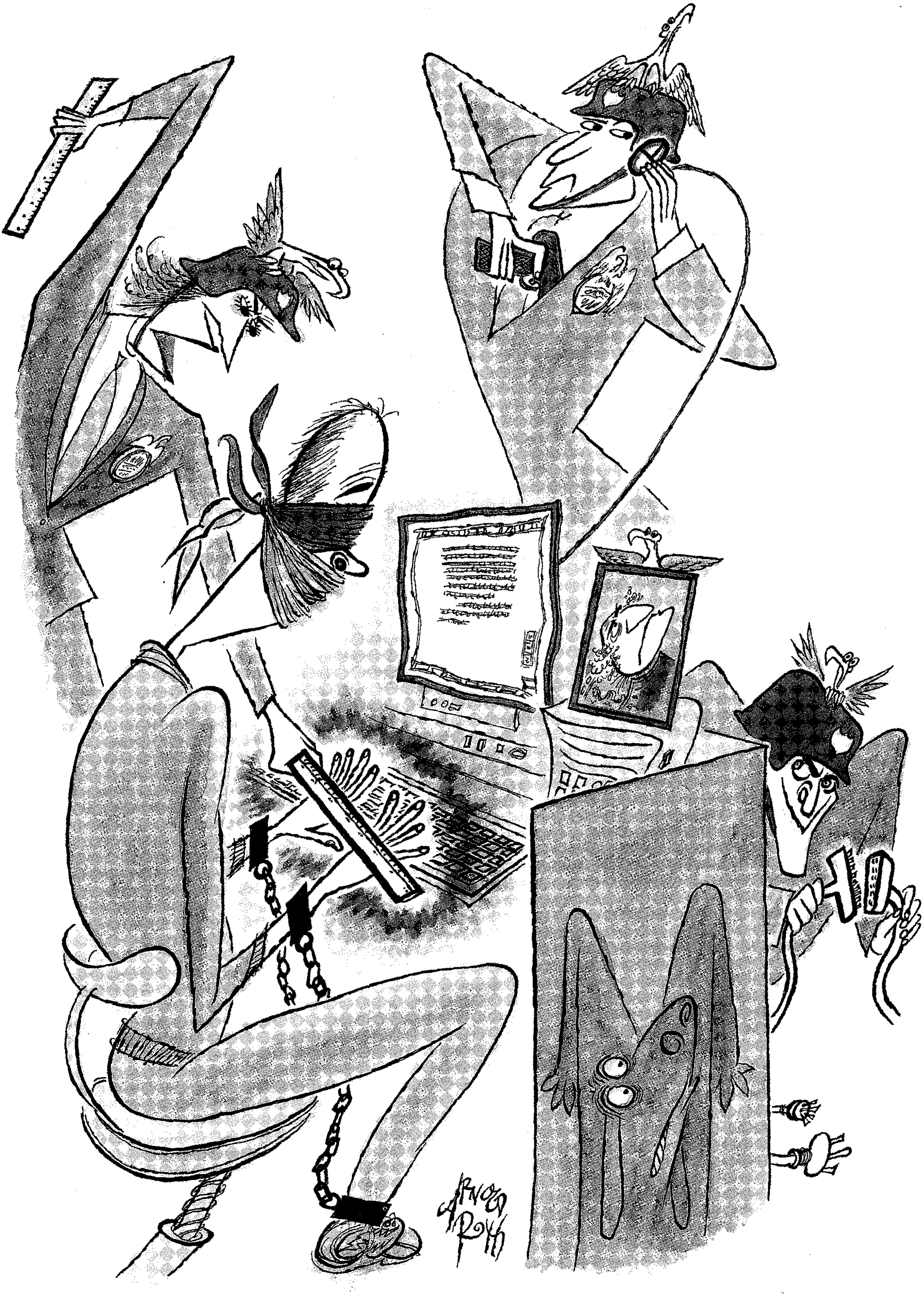
The FEC thus has plunged into what Smith calls a "bizarre" rule-making process that could shackle the political blogosphere. This would be a particular disaster for the Right, which has maintained its early advantage over the Left in the blogosphere, despite the emergence of big liberal sites like *Daily Kos*. Some 157 of the top 250 political blogs express right-leaning views, a recent liberal survey found. Reaching a growing and influential audience—hundreds of thousands of readers weekly (including most journalists) for the top conservative sites—the blogosphere has enabled the Right to counter the biases of the liberal media mainstream. Without the blogosphere, Howell Raines would still be the *New York Times*'s editor, Dan Rather would only now be retiring, garlanded with praise—and John Kerry might be president of the U.S., assuming that CBS News had gotten away with its last-minute falsehood about President Bush's military service that the diligent bloggers at *PowerLine*, *LittleGreenFootballs*, and other sites swiftly debunked.

Are the hundreds of political blogs that have sprouted over the last few years—twenty-first-century versions of the Revolutionary era's political pamphlets—"press," and thus exempt from FEC regulations? Liberal reform groups like Democracy 21 say no. "We do not believe anyone described as a 'blogger' is by definition entitled to the benefit of the press exemption," they collectively sniffed in a brief to the FEC. "While some bloggers may provide a function very similar to more classical media activities, and thus could reasonably be said to fall within the exemption, others surely do not." The key test, the groups claimed, should be whether the blogger is performing a "legitimate press function." But who decides what is legitimate? And what in the Constitution gives him the authority to do so?

A first, abandoned, draft of proposed FEC Web rules, leaked to the *RedState* blog last March, regulated all but tiny, password-protected political sites, so bloggers should be worried. Without a general exemption, political blogs could easily find themselves in regulatory hell. Say it's a presidential race, Condi Rice versus Hillary Clinton. You run a wildly opinionated and popular group blog—call it *No to Hillary*—that rails daily about the perils of a Clinton restoration and sometimes republishes Rice campaign material. Is your blog making "contributions" to Rice? Maybe. The FEC says that a "contribution" includes "any gift, subscription, loan, advance, or deposit of money or *anything of value* made by any person for the purpose of influencing any election for Federal office" (my italics). If your anti-Hillary blog spends more than $1,000, you could also find it re-classified as a "political committee." Then you've got countless legal requirements and funding limits to worry about.

In such a regulated Web-world, bloggers and operators of political sites would have to get press exemptions on a case-by-case basis. The results, election-law expert Bob Bauer explains, would be "unpredictable, highly sensitive to subtle differences in facts, and to the political environment of the moment." Even when the outcome is happy, says Bauer, "a favorable result is still an act of *noblesse oblige* by a government well aware that if it turns down a request, the disappointed applicant is left with litigation as the only option."

Sites would live in fear of Kafkaesque FEC enforcement actions, often triggered by political rivals' complaints. "If the matter is based on a complaint," notes former FEC counsel Allison Hayward, "the 'respondent' will receive a letter from the FEC with the complaint and will be asked to show why the FEC shouldn't investigate." An investigation involves "the usual tools of civil litigation—document requests, depositions, briefs, and the like." The outcome can take months "or longer" to determine, says Hayward. "If a complaint is filed against you, there will be a flurry of activity while you respond, then perhaps silence—then another letter will arrive and you will be required to respond promptly, then maybe nothing again for months." Most political bloggers aren't paid "professional" reporters or commentators but just democratic citizens with day jobs who like to


Arnold Roth

exercise their right to voice their opinions. If doing so without a lawyer puts them or their families at risk, many will simply stop blogging about politics—or never start.

If you think such fretting is silly, says Bradley Smith, consider the case of Bill Liles, who faced an FEC inquiry when Smith was commissioner. In 2000, a businessman in the little Texas town of Muleshoe, Harvey Bass, painted SAVE OUR NATION: VOTE DEMOCRAT AL GORE FOR PRESIDENT on a beat-up box and plunked it on his furniture store's porch. Sick of looking at it, Liles and a friend pasted a "bigger and better" poster praising W. on a trailer and parked it right across from Bass's store. This was too much for another local, Don Dyer, who complained to the FEC that Liles's sign lacked mandated disclosures about who paid for it and whether Bush had signed off on it.

Though the FEC in the end let Liles and his fellow activists off, the men had in fact broken not just disclosure rules but any number of other regulations, too, recalls Smith. They had clearly spent a bit more than $250 on their makeshift sign, for example, but hadn't reported it, as required, to the FEC. "Total statutory penalties could have easily exceeded $25,000," Smith observes. How different is Liles's praiseworthy activism from that of many political bloggers? The medium differs, but Liles, like a blogger, is simply voicing his opinion. And this was *pre*-McCain-Feingold.

Even if the FEC starts by regulating only a little bit of Web politics, instead of the extensive oversight it had at first planned—and a laxer regime is likelier, thanks to the fierce outburst from political blogs, right and left, when they discovered their freedom of speech under fire—there's no guarantee that the commission won't steadily expand its reach later. "If the history of campaign finance regulation is any guide," notes Commissioner Toner, "once the FEC exercises jurisdiction over the Internet, the Commission's initial set of regulations, even if narrowly tailored, are likely to lead to broader regulation in the future." Right after McCain-Feingold became law, co-sponsor Senator Russ Feingold opined: "It is only a beginning. It is a modest reform. . . . There will be other reforms." Most campaign-finance reformers share that regulate-to-the-max outlook, aiming—swiftly or incrementally—to close *all* the loopholes.

Recognizing that McCain-Feingold is out of control, liberty-minded Texas Republican Jeb Hensarling introduced the Online Freedom of Speech Act (HR 1606) in the House last April. (Harry Reid has sponsored identical legislation in the Senate, showing that not all Democrats are lost on the issue.) The bill reinforces the Internet's current regulation-free status by excluding blogs and various other Web communications from campaign-finance strictures. Brought to an expedited vote under special rules that required a two-thirds majority in early November, the bill—opposed strenuously by the campaign-finance reform "movement"—failed. "Today's action marks a sad day for one of our nation's most sacred rights: freedom of speech," reflected House Speaker Dennis Hastert. "The last thing this Congress should be doing is trying to stifle public debate online."

The House Democrats torpedoed HR 1606, but they had surprising help from about three dozen Republicans. Why did so many normally staunch opponents of campaign-finance speech restrictions shift camp? One possible explanation, perhaps cynical: it's hard to unseat incumbents, given their advantages of name recognition, free media exposure, and an easier time raising donations. If they can make it harder for their rivals to speak, which campaign-finance rules help them to do, the challenger's task gets harder still. (Notably, after Congress began campaign-finance restrictions in the seventies, incumbency rates began to rise.) Once in office, some Republicans may suddenly like McCain-Feingold's power to shield them from criticism—including on the Web.

It's not just the blogosphere that's at risk. The Left has also begun to use campaign-finance reform—not McCain-Feingold but equally onerous state regulations—to try to shush political talk radio. The oldest of the new media—Rush Limbaugh went national around 15 years ago—political talk radio is the Right's dominion. Not one of the top 20 nationally syndicated political shows features a left-of-center host, and right-leaning radio talkers outnumber liberals three to one. Over 40 percent of Americans tune in at least occasionally to this extremely influential medium, and over 20 percent use it as a primary source of political information. Given the Left's continuing inability to compete on the dial—its much-ballyhooed Air America doesn't even register in the Arbitron ratings in some markets—its preferred strategy in the future likely will be to force conservatives like Rush Limbaugh and William Bennett off the air.

> **"Even if the FEC starts by regulating only a little bit of Web politics, there's no guarantee that it won't expand its reach later."**

Consider what's going on in Washington State as an early warning. Early in 2005, the Democrat-controlled legislature passed—and Democratic governor Christine Gregoire signed—a bill boosting the state's gasoline tax a whopping 9.5 cents per gallon over the next four years, supposedly to fund transportation projects. Thinking that their taxes were already plenty high and that the state's notoriously corrupt Transportation Department would just squander the gas-tax revenues (millions on enviro-friendly wildlife overpasses, for instance, but little on new roads), some citizens organized an initiative campaign, as Washington law allows, to junk the new levy: No New Gas Tax.

Two popular conservative talk radio hosts, Kirby Wilbur and John Carlson, explained why the gas tax was bad news and urged listeners to sign the 225,000 petitions necessary to get the rollback initiative on the November ballot, though they played no official role in the campaign and regularly featured on their shows defenders as well as opponents of the tax hike. With the hosts' help, the petition drive got almost twice the needed signatures, but the ballot initiative, strongly opposed by labor unions, the state's liberal media, environmental groups, and other powerful interests, narrowly lost.

Meantime, however, a group of pro-tax politicians sued No New Gas Tax, arguing that Wilbur's and Carlson's on-air commentaries were "in-kind contributions" and that the anti-tax campaign had failed to report them to the proper state authorities. The suit sought to stop NNGT from accepting any more of these "contributions" until it disclosed their worth—though how the initiative's organizers could control media discussions or calculate their monetary value remained unclear. The complaint also socked NNGT with civil penalties, attorneys' fees and costs, and other damages. Even more offensively, to litigate the suit the politicians hired a private law firm, Foster Pepper & Shefelman, which serves as bond counsel to Washington State. The firm, which represents unions, hospitals, and retirement funds among its other clients, could thus clean up from the state's plan to sell gas-tax-backed bonds. Appearance of corruption, anyone?

The real target of the suit was clearly Wilbur and Carlson, or, more accurately, their corporate employer, Fisher Communications. If NNGT *received* the "contributions," that meant Fisher had *sent* them by broadcasting Wilbur's and Carlson's support for the initiative. Washington law limits contributions in the last three weeks of a political campaign to $5,000. Depending on how one measured the dollar worth of on-air "contributions," Fisher could thus face big fines and criminal sanctions if it let Wilbur and Carlson keep talking about the gas tax. "Thankfully, Fisher assured us that we *could* keep talking about the subject on the air, and we did," Wilbur says. The judge ruled in favor of the pro-tax pols, though he finessed the $5,000 limitation problem by ruling only on the "contributions" that occurred prior to the campaign's last three weeks.

The Institute for Justice, a libertarian legal defense group, has entered the fray, filing both an appeal to the Washington Supreme Court and a counterclaim against the politicians behind the suit. "I think this case presents a substantial issue under the First Amendment," institute attorney Bill Mauer explained. "This is one of the most important cases nationally about the right of the press to speak freely, without the interference of the government or regulation of the government—because the power to regulate is the power to suppress." Should the appeal lose, the days of political talk radio could be over not only in Washington State but everywhere. "McCain-Feingold could definitely be used in the same fashion," Mauer tells me. "In fact, the prosecutors in this case say McCain-Feingold permits them to do this. But pretty much any state that has campaign-finance laws that restrict contributions is subject to this abuse, too."

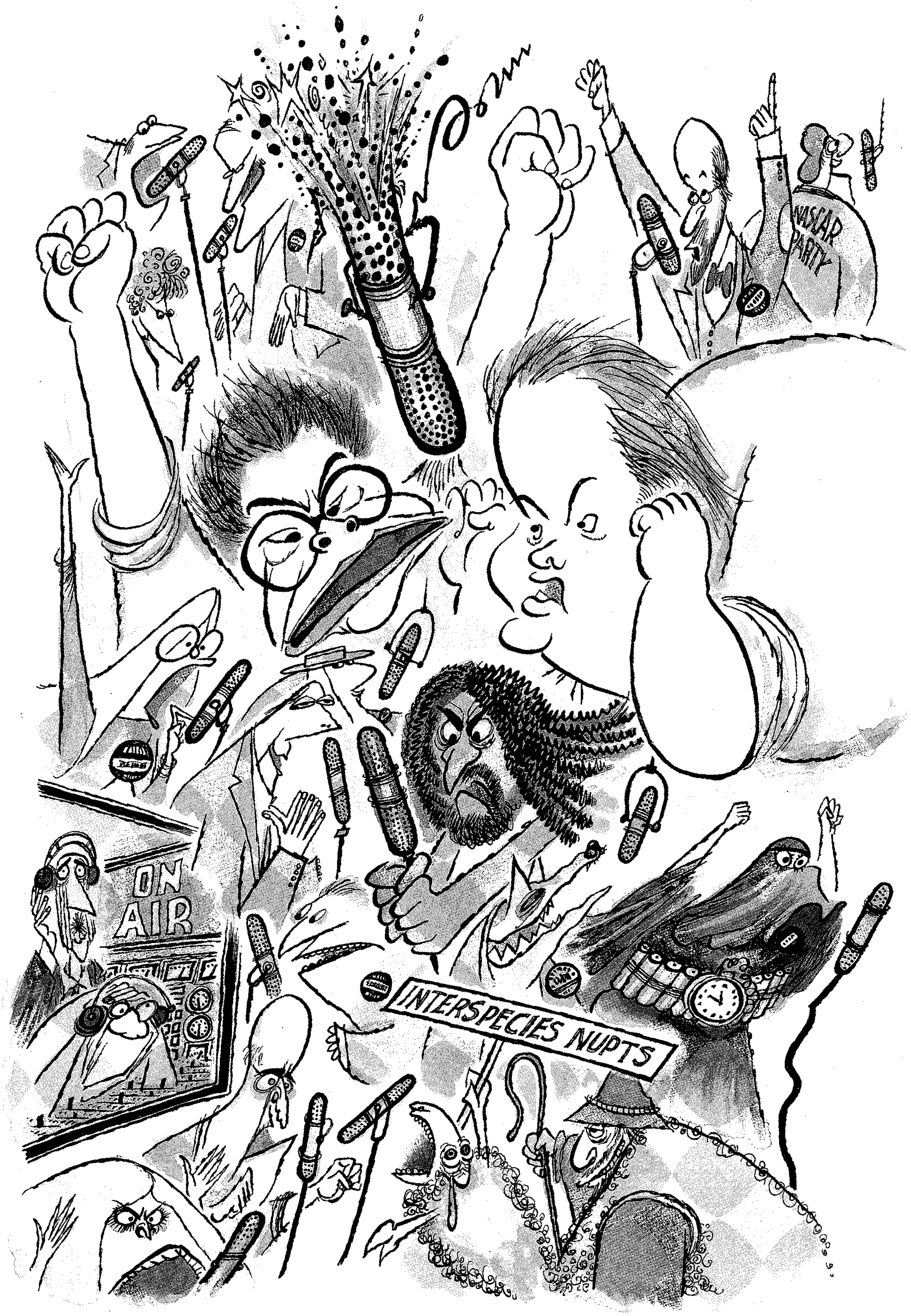
All this massively begs the question: Why should any American *need* government permission to express himself? Instead of a media exemption, blogger Glenn Reynolds sarcastically testified at an FEC hearing, maybe we need a "free speech exception, in which you are allowed to say what you want about political candidates without fear of prosecution by the government."

You'd think that the Supreme Court would have rescued the new media—and the nation—from all this regulatory tyranny. President Bush reportedly agreed not to veto McCain-Feingold only because he was sure the Court would do it for him and he could thereby avoid riling up McCain. After all, the language of the First Amendment is unambiguous: "Congress shall make no law . . . abridging the freedom of speech, or of the press." The Court has extended First Amendment free-speech protection in recent years to nude dancing, animated online kiddie porn, flag burners, tobacco ads, and cross burners. For its original architects, of course, the First Amendment's chief aim was to protect *political* speech—the right to criticize the government. The notion that government could restrict the speech of some—which is what campaign-finance rules do—would have been the very definition of unconstitutional tyranny for men like Samuel Adams or James Madison. How could the Supremes not stop the campaign-finance juggernaut?

Yet the Court's 5-to-4 *McConnell* ruling approved almost all of McCain-Feingold. The 2003 decision shocked many, but the Court's "evolving" jurisprudence in the area of campaign finance should have made it not all that surprising. For the last three decades, the Supreme Court has chopped steadily away at constitutional protection for political speech when campaign finance is at issue. In its 1974 *Buckley* decision, the Court took the first, disastrous step by authorizing the "balancing" of free speech concerns with the "governmental interest" in preventing "the actuality and the appearance of corruption."

The balancing idea has become a liberal commonplace, expressed bluntly by former Democratic House minority leader Richard Gephardt a few years ago: "What we have is two important values in direct conflict: freedom of speech and our desire for healthy campaigns in a healthy democracy." But as commentator Thomas Sowell retorted, whatever Gephardt's definition of a healthy campaign is, "it is not part of the Constitution of the United States—and free speech is." In fact, it is the bedrock of our healthy democracy.

Buckley's loose language is troubling, too. "The 'appearance of corruption' can mean anything," says former FEC commissioner Smith. "If the 'appearance of corruption' is sufficient to justify regulation, the practical effect is to eliminate the need for the government to show any justification for the regulation in question." In fact, even John McCain, now incorruptible after his involvement as one of the scandalous Keating Five, could appear corrupt. Several aides from his 2000 presidential run, including his former campaign manager, press secretary, finance director, and legal counsel have been working for the Reform Institute, a nonprofit group dedicated to (you guessed it) campaign-finance reform—though it primarily seems to be the 2008 McCain-for-President campaign-in-waiting. Some months


VASSAR PARTY
ON AIR
INTERSPECIES NUPTS

back, when Cablevision sought approval for a pricing change from the Senate Commerce Committee, then chaired by McCain, the company developed a sudden interest in campaign-finance reform and gave the Reform Institute a $200,000 "soft" donation. Looks fishy, no?

Making matters worse, the Supreme Court's 1990 *Austin* decision redefined "corruption" to mean not just the exchange of political favors for money—seemingly *Buckley*'s view, though the Court's opinion is vague—but also "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas." In other words, the Supremes fully embraced the Inequality = Corruption thinking of the campaign-finance reformers. If corporations had or appeared to have too much influence, government could now stamp out this "corruption" by shutting them up, as McCain-Feingold has done, rather than by the checks and balances of faction against faction, as the Founders envisioned.

In his powerful *McConnell* dissent, Clarence Thomas spelled out "the chilling endpoint" of the Court's reasoning: "outright regulation of the press"—exactly what the campaign-reform theorists ultimately seek. "Media companies can run pro-candidate editorials as easily as non-media corporations can pay for advertisements," Thomas explained. "Media corporations are influential. There is little doubt that the editorials and commentary they run can affect elections." The Supreme Court has found little to distinguish media and non-media corporations. Asked Thomas: "What is to stop a future Congress from determining that the press is 'too influential,' and that the 'appearance of corruption' is significant when media organizations endorse candidates or run 'slanted' or 'biased' news stories in favor of candidates or parties?" Answer: Nothing. "Although today's opinion does not expressly strip the press of First Amendment protection," Thomas warned, "there is no principle of law or logic that would prevent the application of the Court's reasoning in that setting. The press now operates at the whim of Congress."

Perhaps the liberal mainstream media will stop cheering campaign-finance reform when they realize their First Amendment rights are at stake, too.

Though campaign-finance madness is the Number One regulatory threat to the new media, it's not the only one. The Left is now pushing Congress to restore the Fairness Doctrine, which would kill talk radio and possibly conservative-friendly Fox News, too.

For those who don't remember, the Federal Communications Commission's Fairness Doctrine, formalized in the late forties but dating back to 1929, required radio and then broadcast television stations to cover "vitally important controversial issues of interest in the community served by the broadcaster" and to provide "opportunity for the presentation of contrasting viewpoints on such issues"—what came to be known as the "equal time" rule. Any broadcaster who didn't follow these regulations could face fines, free time given to voices that federal regulators felt hadn't gotten fair treatment, and even loss of operating license. Concern that particular partisan views could dominate what was then a very limited broadcast spectrum, which government felt it had to parcel out with the public interest in mind, drove this meddling. But politicians and advocacy groups frequently used (or abused) the Fairness Doctrine to go after their political enemies, as one former Kennedy administration official acknowledged: "Our massive strategy was to use the Fairness Doctrine to challenge and harass the right-wing broadcasters, and hope that the challenges would be so costly to them that they would be inhibited and decide it was too costly to continue."

The doctrine made it hard to program political talk radio in today's Rush Limbaugh–Sean Hannity sense—boisterously opinionated, unafraid to name names, informative, and, if you disagree with the host's politics, infuriating. If a station ran a show like Limbaugh's, drawing upward of 20 million listeners a week, it would also have to run a lefty alternative, even if—as has been the case with ratings-challenged Air America in some markets—it can't get any sponsors. Too risky, most radio execs concluded, and kept opinion programs off the air. In 1980, talk shows of any kind numbered fewer than 100 nationwide.

All that changed in the eighties, when Ronald Reagan's free-market-minded FCC stopped enforcing the Fairness Doctrine and then dumped it entirely in 1987. Because cable and satellite television and FM radio had vastly expanded the number of television and radio stations, "the new technological abundance," in regulatory theorist Peter Huber's phrase, had robbed the doctrine of any plausible "scarcity" rationale.

That the doctrine was also "chilling to free speech," as FCC head Mark Fowler argued, became crystal clear after it was gone: AM radio exploded with political talk shows. From under 5 percent of all programming, "informational" programming expanded to over 20 percent of the AM mix just seven years after the Fairness Doctrine's demise. Today, more than 1,400 stations feature the talk format exclusively—and the vast majority broadcast conservative voices, because that's what draws the listeners, desperate for an alternative to the liberal mainstream press.

"The Left is now pushing to restore the Fairness Doctrine, which would kill talk radio and possibly Fox News, too."

Small wonder, then, that House Democrats proposed two bills in 2005 to bring the Fairness Doctrine back—and as a *law*, rather than a mere agency regulation. New York Democratic representative Louise Slaughter, who introduced the first of the two bills, says that Right-ruled radio is a grave threat to American freedoms, "a waste of good broadcast time, and a waste of our airwaves." People "may hear whatever they please and whatever they choose," she tells PBS's Bill Moyers, in a statement as incoherent as it is illiberal. "And of course they have the right to turn it off. But that's not good enough either. The fact is that they need the responsibility of the people who are licensed to use our airwaves judiciously and responsibly to call them to account if they don't." In other words, people can't be trusted with freedom but need the supervision of a paternalist government.

Slaughter doesn't want to re-regulate only radio. When asked by Moyers if she was also proposing the new Fairness Doctrine for Fox News or MSNBC, Slaughter responded: "You bet. . . . Fairness isn't going to hurt anybody." If there's anything liberals hate more than talk radio it's Fox News, which has dominated cable news by appealing to conservative viewers fed up with the networks' liberal bias. New York Democratic representative Maurice Hinchey, sponsor of the second Fairness Doctrine bill, went so far as to host a special Capitol Hill screening of *Outfoxed: Rupert Murdoch's War on Journalism*, a "documentary" hit job. Slaughter, Hinchey, Vermont socialist Bernie Sanders, Washington State congressman Jay Inslee, and several other House lefties have recently formed the Future of American Media Congress to push for a media crackdown.

It's easy to dismiss the Orwellian policy prescriptions of small-fry like these. But look who else has been talking about the Fairness Doctrine:

"There has been a profound and negative change in the relationship of America's media with America's people," John Kerry told the *Boston Globe*'s Thomas Oliphant after losing the 2004 presidential race. "We learned that the mainstream media, over the course of the last year, did a pretty good job of discerning," he said, inaccurately. "But there's a . . . sub-media that talks and keeps things going for entertainment purposes rather than for the flow of information," he complained. "This all began, incidentally, when the Fairness Doctrine ended," Kerry maintained. "You would have had a dramatic change in the discussion in this country had we still had a Fairness Doctrine in the course of the last campaign."

Former vice president and Democratic standard-bearer Al Gore, in an overheated October speech bemoaning the purported hollowing out of the American "marketplace of ideas," blamed it in part on the repeal of the Fairness Doctrine, after which "Rush Limbaugh and other hate-mongers began to fill the airwaves." And here's current Democratic Party chair Howard Dean, in a 2003 interview railing against Rupert Murdoch: "I believe we need to re-regulate the media . . . so we can be sure that the American people get moderate, conservative, and liberal points of view." Dean noted that he wouldn't need legislation to do this—he could just appoint "different kinds of people" to the FCC.

Finally, in early 2005, an online petition drive called for Americans to "renew the Fairness Doctrine." The imbalance favoring conservative media voices, especially in talk radio, the petition argued, "results in issues of public importance receiving little or no attention, while others are presented in a manner not conducive to listeners' receiving the facts and range of opinions necessary to make informed decisions." One of the three sponsors of this paternalistic document: Media Matters for America, a left-wing press watchdog group, founded by conservative-turned-lefty David Brock, with help from ex–Clinton advisor John Podesta.

These aren't marginal figures; they're the heart of today's Democratic Party. Their calls for reform rest on a preposterous claim: that "media consolidation" has led to a sharp narrowing in the range of viewpoints available to the American people. In an era of newspapers, magazines, books, broadcast radio and television, cable and satellite television, and the Internet—now joined by satellite radio, podcasts, and even newer forms of "technological abundance"—the involved citizen has never had more information, more debate, more ideas from all political perspectives at his fingertips. What's really happening is that the Left, having lost its media monopoly, has had trouble competing in a true "marketplace of ideas" and wants to shut that marketplace down.

If the Dems take back Congress or the White House, watch out. Nothing would please them more than to drag the country back to the good old days, when liberals didn't have to put up with Rush Limbaugh and Laura Ingraham and Bill O'Reilly and Matt Drudge and the countless other upstarts recasting our public debate.

The Right—joined by free-speech defenders from across the political spectrum—needs to defeat the liberal regulatory threat before it does real damage to Americans' rights to express their political views. President Bush should strongly back Hensarling's Online Freedom of Speech Act, whose sponsors may reintroduce it soon in the House under regular rules, which require only a simple majority to pass it. Showing that he gets it, the president has just nominated three reportedly liberty-minded lawyers to fill FEC vacancies, including Robert Lenhard, part of the legal team that challenged McCain-Feingold's constitutionality. One campaign-finance reform group described the Lenhard pick as "beyond disappointing": excellent news for free-speech fans.

In deciding two campaign-finance reform cases in the months ahead, the Roberts Court, one hopes, will show greater enthusiasm for First Amendment protection of political speech than did its predecessor, which should have shot down McCain-Feingold. If neither Congress nor the Supreme Court repeals this unconstitutional, un-American travesty, we can expect election regulations, in the grim words of Justice Antonin Scalia's *McConnell* dissent, "to grow more voluminous, more detailed, and more complex in the years to come—and always, always, with the objective of reducing the excessive amount of speech." Thus will our most effective real protection against "the actuality and appearance of corruption"—the First Amendment itself—be nullified.

Lovers of liberty should expose calls to restore the Fairness Doctrine for the fraudulent power-grab that they plainly are. And the Right, in particular, needs to understand how much it has benefited from a deregulated media universe. It should be confident that it has the right ideas, and that when it gets the chance to present them directly to the American people—as the new media have allowed it to do—it will win the debate. ■

Marriage and Caste

America's chief
source of inequality?
The Marriage Gap.

Kay S. Hymowitz

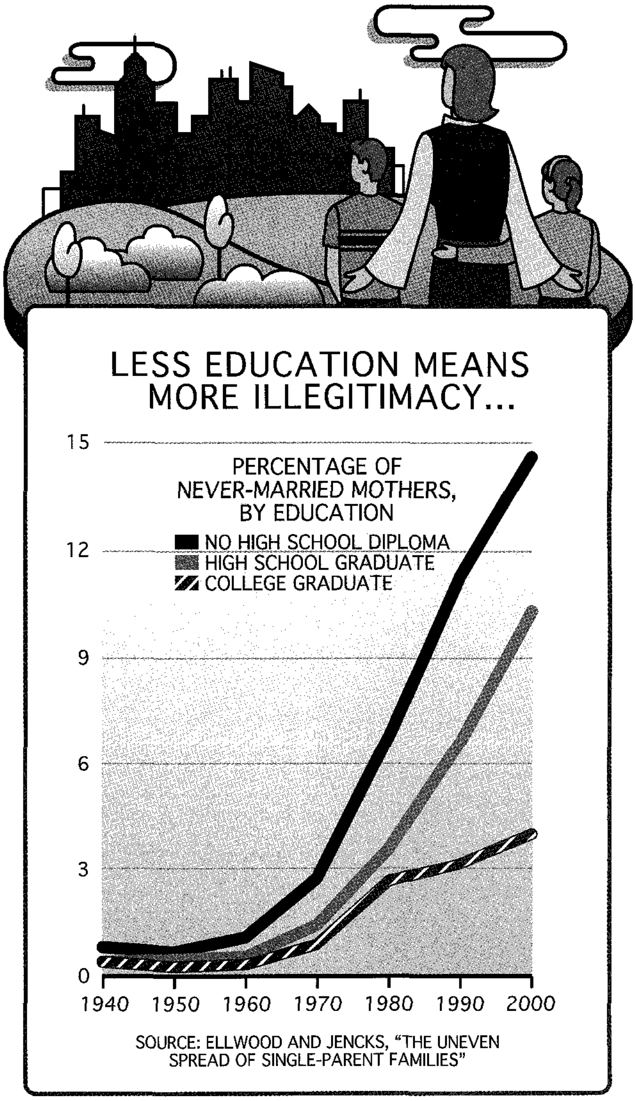
For a while it looked like Hurricane Katrina would accomplish what the NAACP never could: reviving civil rights liberalism as a major force in American politics. There it was for the whole world to see: the United States was two nations, one rich, one poor and largely black, one driving away in the family SUV to sleep in the snug guest rooms of suburban friends and relatives, the other sunk in the fetid misery of the Superdome. *Newsweek*, echoing Michael Harrington's 1962 landmark book that ignited the War on Poverty, titled its Katrina coverage "The Other America" and warned the nation not to return to the "old evasions, hypocrisies, and not-so-benign neglect" of the "problems of poverty, race, and class."

Though that liberalism revival only lasted for about five minutes, the post-Katrina insight was correct. There *are* millions of poor Americans, living not just in down-on-your-luck hardship but in entrenched, multigenerational poverty. There *is* growing inequality between the haves and the have-nots. And there *are* reasons to worry whether the American dream is within the reach of all.

Graphs by Alberto Mena

But what two-America talk doesn't get is just how much these ominous trends are entangled with the collapse of the nuclear family. While Americans have been squabbling about gay marriage, they have managed to miss the real marriage-and-social-justice issue, one that affects far more people and threatens to undermine the American project. We are now a nation of separate and unequal families not only living separate and unequal lives but, more worrisome, destined for separate and unequal futures.

Two-America Jeremiahs usually nod at the single-parent family as a piece of the inequality story, but quickly change the subject to describe—accurately, as far as it goes—an economy that has implacably squeezed out manufacturing jobs, reduced wages for the low-skilled, and made a wallet-busting college education crucial to a middle-class future. But one can't disentangle the economic from the family piece. Given that families socialize children for success—or not—and given how marriage orders lives, they are the same problem. Separate and unequal families produce separate and unequal economic fates.


LESS EDUCATION MEANS MORE ILLEGITIMACY...

SOURCE: ELLWOOD AND JENCKS, "THE UNEVEN SPREAD OF SINGLE-PARENT FAMILIES"

Most people understand what happened to the American family over the last half-century along these lines: the birth control pill begat the sexual and feminist revolutions of the 1960s, which begat the decline of the traditional nuclear family, which in turn introduced the country to a major new demographic: the single mother. Divorce became as ubiquitous as the automobile; half of all marriages, we are often reminded, will end in family court. Growing financial independence and changing mores not only gave women the freedom to divorce in lemming-like numbers; it also allowed them to dispense with marriage altogether and have children, Murphy Brown–style, on their own. (This is leaving aside inner-city teenage mothers, whom just about everyone sees as an entirely different and more troubling category.) Today, we frequently hear, a third of all children are born to unmarried women.

To put it a little differently, after the 1960s women no longer felt compelled to follow the life course charted in a once-popular childhood rhyme—first comes love, then marriage, then the baby carriage. Sure, some people got married, had kids, and stayed married for life, but the hegemony of Ozzie and his brood was past.

Alternative families are just the way things are; for better or for worse, in a free society people get to choose their own "lifestyles"—bringing their children along for the ride—and they are doing so not just in the United States but all over the Western world.

That picture turns out to be as equivocal as an Escher lithograph, however. As the massive social upheaval following the 1960s—what Francis Fukuyama has termed "the Great Disruption"—has settled into the new normal, social scientists are finding out that when it comes to the family, America really has become two nations. The old-fashioned married-couple-with-children model is doing quite well among college-educated women. It is primarily among lower-income women with only a high school education that it is in poor health. This fact may not conform to the view from Hollywood; movies from *Kramer vs. Kramer* to *The Ice Storm* to the recent *The Squid and the Whale*, not to mention unmarried celebrity moms like Goldie Hawn and moms-to-be like Katie Holmes, have helped reinforce the perception that elite women snubbing a conformist patriarchy were the vanguard of a vast social change. Now it's pretty clear that this is a myth saying more about La-La Land than the reality of American family breakdown.

The most important recent analysis of that reality is "The Uneven Spread of Single-Parent Families," a 2004 paper by Harvard's David Ellwood and Christopher Jencks. The Kennedy School profs divide American mothers into three categories by education level: women with a college degree or higher; women with a high school diploma (including those with some college, whose trends look very similar to those with high school alone); and women who never graduated high school. The paper's findings are worth pondering in some detail.

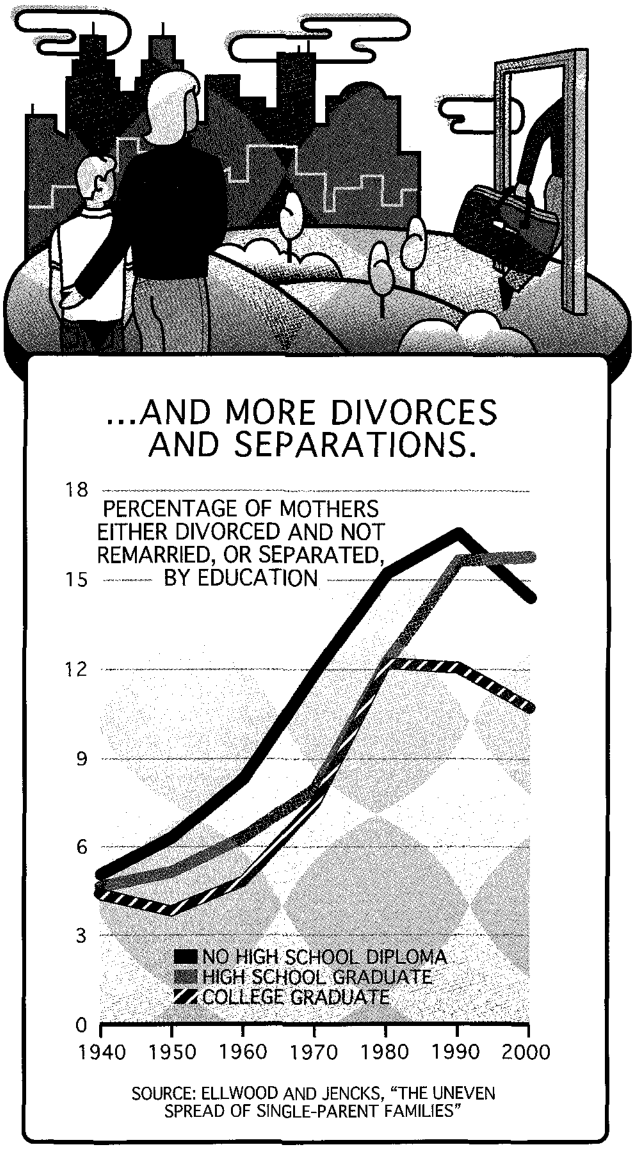
Forty-five years ago, there was only a small difference in the way American women went about the whole marriage-and-children question; just about everyone, from a Smith grad living in New Canaan, Connecticut, to a high school dropout in Appalachia, first tied the knot and only then delivered the bouncing bundle of joy. As of 1960, the percentage of women with either a college or high school diploma who had children without first getting married was so low that you'd need a magnifying glass to find it on a graph; even the percentage of high school dropouts who were never-married mothers barely hit 1 percent. Moreover, after getting married and having a baby, almost all women stayed married. A little under 5 percent of mothers in the top third of the education distribution and about 6 percent of the middle group were either divorced or separated (though these figures don't include divorced-and-then-remarried mothers). And while marital breakup was higher among mothers who were high school dropouts, their divorce rate was still only a modest 8 percent or so.

That all changed in the decades following the 1960s, when, as everyone who was alive at the time remembers, the American family seemed on the verge of self-immolation. For women, marriage and children no longer seemed part of the same story line. Instead of staying married for the kids, mothers at every education level joined the national divorce binge. By 1980, the percentage of divorced college-educated mothers more than doubled, to 12 percent—about the same percentage as divorced mothers with a high school diploma or with some college. For high school dropout mothers, the percentage increased to 15 percent. An increasing number of women had children without getting married at all. So far the story conforms to general theory.

But around 1980, the family-forming habits of college grads and uneducated women went their separate ways. For the next decade the proportion of college-educated moms filing for divorce stopped increasing, and by 1990 it actually starting going down. This was not the case for the least educated mothers, who continued on a divorce spree for another ten years. It was only in 1990 that their increase in divorce also started to slow and by 2000 to decline, though it was too late to close the considerable gap between them and their more privileged sisters.

Far more dramatic were the divergent trends in what was still known at the time as illegitimacy. Yes, out-of-wedlock childbearing among women with college diplomas tripled, but because their numbers started at Virtually Nonexistent in 1960 (a fraction of 1 percent), they only moved up to Minuscule in 1980 (a little under 3 percent of mothers in the top third of education distribution) to end up at a Rare 4 percent.

Things were radically different for mothers in the lower two educational levels. They decided that marriage and children were two entirely unconnected life experiences. That decline in their divorce rate after 1990? Well, it turns out the reason for it wasn't that these women had thought better of putting their children through a parental breakup, as many of their more educated sisters had; it was that they weren't getting married in the first place. Throughout the 1980s and nineties, the out-of-wedlock birthrate soared to about 15 percent among mothers with less than a high school education and 10 percent of those with a high school diploma or with some college.



SOURCE: ELLWOOD AND JENCKS, "THE UNEVEN SPREAD OF SINGLE-PARENT FAMILIES"

Many people assume that these low-income never-married mothers are teen mothers, but teens are only a subset of unmarried mothers, and a rather small one in recent years. Yes, the U.S. continues to be the teen-mommy capital of the Western world, with 4 percent of teen girls having babies, a rate considerably higher than Europe's. But that rate is almost one-third lower than it was in 1991, and according to up-to-the-minute figures from the National Center for Health Statistics, teens account for only about a quarter of unwed births—compared with half in 1970. Today 55 percent of unmarried births are to women between 20 and 24; another 28 percent are to 25- to 29-year-olds. These days, it is largely low-income twentysomethings who are having a baby without a wedding ring. The good news is that single mothers are not as likely to be 15; the bad news is that there is now considerable evidence to suggest that, while their prospects may be a little better than their teenage sisters' would be, they are not dramatically so.

Race has also added to misperceptions about single mothers. It's easy to see why, with close to 70 percent of black children born to single mothers today—including educated mothers—compared with 25 percent of non-black kids. But blacks make up only 12 percent of the country's population, and black children account for only one-third of the nation's out-of-wedlock kids.

Tune out the static from teen pregnancy, race, and Murphy Brown, then, and the big news comes into focus: starting in 1980, Americans began to experience a widening Marriage Gap that has reached dangerous proportions. As of 2000, only about 10 percent of mothers with 16 or more years of education—that is, with a college degree or higher—were living without husbands. Compare that with 36 percent of mothers who have between nine and 14 years of education. All the statistics about marriage so often rehashed in magazine and newspaper articles hide a startling truth. Yes, 33 percent of children are born to single mothers; in 2004, according to the National Center for Health Statistics, that amounted to 1.5 million children, the highest number ever. But the vast majority of those children are going home from the maternity wards to low-rent apartments. Yes, experts predict that about 40 to 50 percent of marriages will break up. But most of those divorces will involve women who have always shopped at Wal-Mart. "[T]he rise in single-parent families is concentrated among blacks and among the less educated," summarize Ellwood and Jencks. "It hardly occurred at all among women with a college degree."

> **"The vast majority of illegitimate children are going home from the maternity wards to low-rent apartments."**

When Americans began their family revolution four decades ago, they didn't tend to talk very much about its effect on children. That oversight now haunts the country, as it becomes increasingly clear that the Marriage Gap results in a yawning social divide. If you want to discuss why childhood poverty numbers have remained stubbornly high through the years that the nation was aggressively trying to lower them, begin with the Marriage Gap. Thirty-six percent of female-headed families are below the poverty line. Compare that with the 6 percent of married-couple families in poverty—a good portion of whom are recent, low-skilled immigrants, whose poverty, if history is any guide, is temporary. The same goes if you want to analyze the inequality problem—start with the Marriage Gap. Virtually all—92 percent—of children whose families make over $75,000 are living with both parents. On the other end of the income scale, the situation is reversed: only about 20 percent of kids in families earning under $15,000 live with both parents.

Princeton sociologist Sara McLanahan, coauthor of the breakthrough book *Growing Up With a Single Parent*, has fleshed out the implications of the Marriage Gap for children in an important paper in *Demography*—and they're not pretty. McLanahan observes that, after 1970, women at all income levels began to marry at older ages, and the average age of first marriage moved into the mid-twenties. But where mothers at the top of the income scale also put off having children until they were married, spending their years before marriage getting degrees or working, those at the bottom did neither.

The results radically split the experiences of children. Children in the top quartile now have mothers who not only are likely to be married, but also are older, more mature, better educated, and nearly three times as likely to be employed (whether full- or part-time) as are mothers of children in the bottom quartile. And not only do top-quartile children have what are likely to be more effective mothers; they also get the benefit of more time and money from their live-in fathers.

For children born at the bottom of the income scale, the situation is the reverse. They face a *decrease* in what McLanahan terms "resources": their mothers are younger, less stable, less educated, and, of course, have less money. Adding to their woes, those children aren't getting much (or any) financial support and time from their fathers. Surprisingly, McLanahan finds that in Europe, too—where welfare supports for "lone parents," as they are known in Britain, are much higher than in the United States—single mothers are still more likely to be poor and less educated. As in the United States, so in Europe and, no doubt, the rest of the world: children in single-parent families are getting less of just about everything that we know helps to lead to successful adulthood.

All this makes depressing sense, but when you think about it, the Marriage Gap itself presents a puzzle. Why would women working for a pittance at the supermarket cash registers decide to have children without getting married, while women writing briefs at Debevoise & Plimpton, who could easily afford to go it alone, insist on finding husbands before they start families? For a long time, social scientists assumed, reasonably enough, that economic self-sufficiency would lead more women to opt for single motherhood. And to listen to the drone of complaint about men around water coolers, in Internet chat rooms, on the Oxygen Network, and in Maureen Dowdworld, there would seem to be plenty of potential recruits for Murphy Browndom. Certainly when they talk to pollsters, women say that they don't think there's anything *wrong* with having a baby without a husband. Yet the women who are forgoing husbands are precisely the ones who can least afford to do so.

The conventional answer to the puzzle is this: in an economy marked by manufacturing decline, especially in cities, too many of the potential husbands for low-income women are either flipping burgers, unemployed, or in jail—in other words, poor marriage material. But three facts raise doubts about this theory.

One, it's not just unemployed men or McDonald's cooks who have become marriage-avoidant; working-class men with decent jobs are also shying from the altar. Two, cohabitation among low-income couples has been increasing; about 40 percent of all out-of-wedlock babies today are born to cohabiting parents. Why would there be a dearth of marriageable men, when there appear to be plenty of cohabitable fathers? And three, marriage improves the economic situation of low-income women, even if their husbands are only deliverymen or janitors. In a large and highly regarded study, the Urban Institute's Robert Lerman concluded that married, low-income, low-educated women enjoyed significantly higher living standards than comparable single mothers. Joe Sixpack may not be Mr. Darcy, but financially, at any rate, he's a lot better than no husband at all.

Still, whatever the arguments against it, the no-marriageable-men theory is entrenched in policy circles and in the academy and is unlikely to go anywhere soon, so let's try another approach to the Marriage Gap conundrum. Instead of asking why poor and near-poor women have stopped marrying before having children, let's think instead about why educated women continue to do so—even though, in order to be accepted in polite company or to put food on the table, they don't need to.

One possible answer is especially pertinent to the Marriage Gap: educated women know that they'd better marry if they want their children to succeed academically, which increasingly is critical to succeeding in the labor market. The New Economy may have made single motherhood a workable arrangement for high-earning mothers in purely economic terms, but it made a husband a must-have in terms of child rearing. No one understands better than an Amherst or Stanford B.A. that her children will have to go to college one day—the bigger the college name, the better—if they are to keep their middle-class status. These women also understand how to get their kids college-bound. Educated, middle-class mothers tend to be dedicated to what I have called The Mission, the careful nurturing of their children's cognitive, emotional, and social development, which, if all goes according to plan, will lead to the honor roll and a spot on the high school debate team, which will in turn lead to a good college, then perhaps a graduate or professional degree, which will all lead eventually to a fulfilling career, a big house in a posh suburb, and a sense of meaningful accomplishment.

It's common sense, backed up by plenty of research, that you'll have a better chance of fully "developing" your children—that is, of fulfilling The Mission—if you have a husband around. Children of single mothers have lower grades and educational attainment than kids who grow up with married parents, even after controlling for race, family background, and IQ. Children of divorce are also less likely to graduate and attend college, and when they do go for a B.A., they tend to go to less elite schools. Cornell professor Jennifer Gerner was baffled some years ago when she noticed that only about 10 percent of her students came from divorced families. She and her colleague Dean Lillard examined the records of students at the nation's top 50 schools and, much to their surprise, found a similar pattern. Children who did not grow up with their two biological parents, they concluded when they published their findings, were only half as likely to go to a selective college. As adults, they also earned less and had lower occupational status.

> **"Educated women know that they'd better marry if they want their children to succeed academically."**

To repeat the question: Why do educated women marry before they have children? Because, like high-status women since status began, they are preparing their offspring to carry on their way of life. Marriage radically increases their chances of doing that.

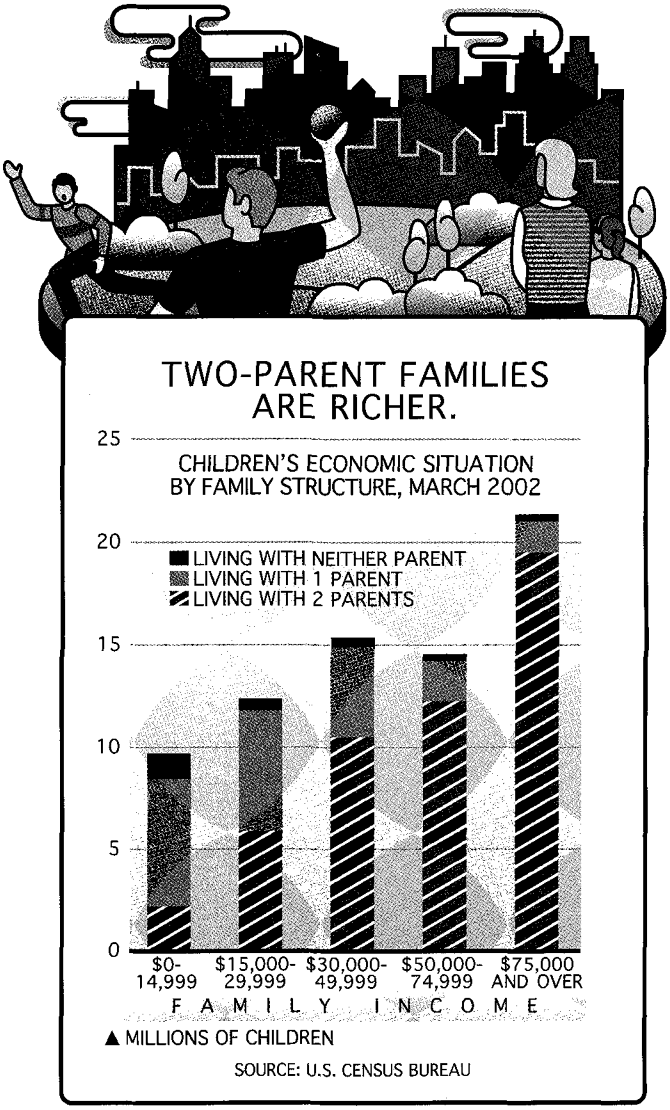
This all points to a deeply worrying conclusion: the Marriage Gap—and the inequality to which it is tied—is self-perpetuating. A low-income single mother, unprepared to carry out The Mission, is more likely to raise children who will become low-income single parents, who will pass that legacy on to their children, and so on down the line. Married parents are more likely to be visiting their married children and their grandchildren in their comfortable suburban homes, and those married children will in turn be sending their offspring off to good colleges, superior jobs, and wedding parties. Instead of an opportunity-rich country for all, the Marriage Gap threatens us with a rigid caste society.

So what is it about the nuclear family that makes it work so well for children decades after Americans have declared it optional? The economists and sociologists who study these things often answer that question with some variation of what might be called the strength-in-numbers theory. Kids with two parents are more likely to have two incomes cushioning them during their developing years. More money means more stability, less stress, better day care and health care, more books, more travel, and, most of all, a home in a good school district—all of which lead to educational and, eventually, workplace success. A husband and wife can support each other if one is laid off or if the other wants retraining or more education. They can take turns caring for the children. Or if they can afford to, they can specialize: the woman (yes, it's still almost always the woman) can take over as homework helper and soccer-team and church-group chauffeur, while the man earns a salary. According to the strength-in-numbers theory, then, two parents are better than one much the way two hands are better than one: they can accomplish more.

But this theory finally doesn't explain all that much. If two parents are what make a difference, then why, when a divorced mother remarries, do her children's outcomes resemble those of children from single-parent homes more than they do those from intact families? Why do they have, on average, lower school grades, more behavior problems, and lower levels of psychological well-being—even when a stepparent improves their economic standard of living?

You could posit that children in stepfamilies may well have suffered through their parents' divorce or have had a difficult spell in a single-parent home. But what, then, do we make of cohabiting parents? Two cohabiting parents also provide few of the benefits for kids that married couples do. The Urban Institute's Robert Lerman has found that even when cohabiters resemble married couples in terms of education, number of children, and income, they experience more material hardship—things like an empty pantry or no phone or an electricity shutoff—and get less help from extended families when they do. And poverty rates of cohabiting-couple parents are double those of married couples. (Lerman's study controls for education, immigration status, and race.)

Others take an alternative approach to the question of why children growing up with their own two married parents do better than children growing up without their fathers. It's not marriage that makes the difference for kids, they argue; it's the kind of people who marry. Mothers who marry and stay married already have the psychological endowment that makes them both more effective partners and more competent parents. After all, we've already seen that married mothers are more likely to be educated and working than single mothers; it makes sense that whatever abilities allowed them to write their Economics 101 papers or impress a prospective boss or husband also make them successful wives and mothers. Many low-income mothers may not have the skills—or, some would argue, the IQ—that would get them their B.A. or a good job, and this lack makes them less likely both to marry or stay married and to raise successful children. "Parents with limited cultural and material resources are unlikely to remain together in a stable marriage," Frank Furstenberg, a famed family researcher, wrote in *Dissent* last summer. "Because the possession of such psychological, human and material capital is highly related to marital stability, it is easy to confuse the effects of stable marriage with the effects of competent parenting."



The problem with this theory is that it merely tiptoes up to the obvious. There is something fundamentally different about low-income single mothers and their educated married sisters. But a key part of that difference is that educated women *still believe in marriage as an institution* *for raising children*. What is missing in all the ocean of research related to the Marriage Gap is any recognition that this assumption is itself an invaluable piece of cultural and psychological capital—and not just because it makes it more likely that children will grow up with a dad in the house. As society's bulwark social institution, traditional marriage—that is, childbearing within marriage—orders social life in ways that we only dimly understand.

For one thing, women who grow up in a marriage-before-children culture organize their lives around a meaningful and beneficial life script. Traditional marriage gives young people a map of life that takes them step by step from childhood to adolescence to college or other work training—which might well include postgraduate education—to the workplace, to marriage, and only then to childbearing. A marriage orientation also requires a young woman to consider the question of what man will become her husband and the father of her children as a major, if not *the* major, decision of her life. In other words, a marriage orientation demands that a woman keep her eye on the future, that she go through life with deliberation, and that she use self-discipline—especially when it comes to sex: bourgeois women still consider premature pregnancy a disaster. In short, a marriage orientation—not just marriage itself—is part and parcel of her bourgeois ambition.

> **“When Americans made marriage optional, poor women lost a culture that told them what was best for their children.”**

When Americans announced that marriage before childbearing was optional, low-income women didn't merely lose a steadfast partner, a second income, or a trusted babysitter, as the strength-in-numbers theory would have it. They lost a traditional arrangement that reinforced precisely the qualities that they—and their men; let's not forget the men!—needed for upward mobility, qualities all the more important in a tough new knowledge economy. The timing could hardly have been worse. At a time when education was becoming crucial to middle-class status, the disadvantaged lost a reliable life script, a way of organizing their early lives that would prize education and culminate in childbearing only after job training and marriage. They lost one of their few institutional supports for planning ahead and taking control of their lives.

Worst of all, when Americans made marriage optional, low-income women lost a culture that told them the truth about what was best for their children. A number of researchers argue that, in fact, low-income women really do want to marry. They have “white picket dreams,” say Kathryn Edin and Maria Kefalas in *Promises I Can Keep: Why Poor Women Put Motherhood Before Marriage*, and though the men in their lives cannot turn those dreams into reality, they continue to gaze longingly into the distance at marriage as a symbol of middle-class stability and comfort. What they don't have, however, is a clue about the very fact that orders the lives of their more fortunate peers: marriage and childbearing belong together. The result is separate and unequal families, now and as far as the eye can see.

As family experts find themselves surrendering to their own research and arguing more and more that marriage is central to the overall well-being of children, they often caution that it is not a cure-all. “Is Marriage a Panacea?” is the illustrative title of a 2003 article in the scholarly journal *Social Problems*, and you know the answer to the question without reading a page. No, shrinking the Marriage Gap may not be a magic potion for ending poverty or inequality or any other social problem. But it's hard to see how our two Americas can become one without more low-income men and women making their way to the altar.

Marriage may not be a panacea. But it is a *sine qua non*.

Gotham Needs Wall Street; Does Wall Street Need Gotham?

New York's leaders don't understand how precarious the city's prosperity is.

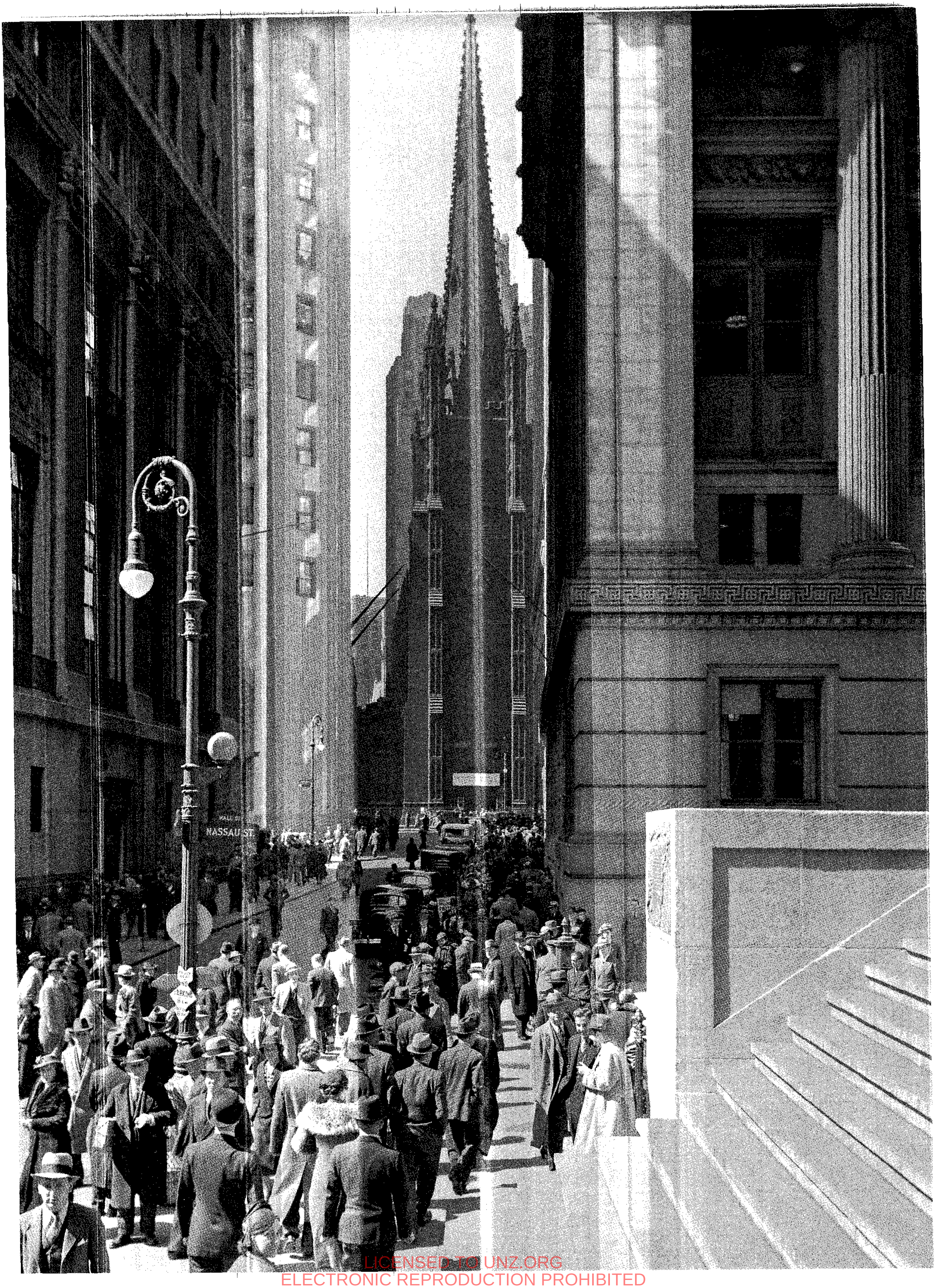
Nicole Gelinas

Wall Street has always been good to New York, the nation's capital of capital. But the city faces two significant challenges it hasn't yet begun to acknowledge. One, the stunning market growth of the eighties and nineties—and Gotham's attendant growth in well-paying jobs, tax revenues, and public-sector spending—may well have been an anomaly that won't be repeated for decades. Two, even when Wall Street does well, its prosperity won't benefit New York City to the extent that it once did. Just as New York grows more dependent on Wall Street, Wall Street grows less dependent on New York.

Over the past half-century, New York's reliance on Wall Street as a source of tax revenues and private employment has become ever greater. Formerly, Wall Street was just one of the three legs of Gotham's sturdy private-sector economy, along with its bustling port and thriving manufacturing industry. But after World War II, the city's port became obsolete, and

Wall Street, New York

MARGARET BOURKE WHITE/BETTMANN/CORBIS


WALL ST
NASSAU ST

its manufacturers drove off down the interstate highways toward cheaper regions. Even so, though the securities industry didn't directly employ more than 100,000 New Yorkers until the early 1980s, the steady growth of both its workforce and its workers' wealth kept the city's economy afloat.

In 1958, when New York manufacturing still flourished, Wall Street jobs accounted for just 1.21 percent of total city employment. A decade later, as New York's other private sectors withered, Wall Street jobs constituted 2.6 percent of Gotham's total. By 1983, Wall Street accounted for 3.5 percent of jobs; by 1993, 4.8 percent. Today, despite massive losses in securities-industry employment after 2000, Wall Street accounts for 4.7 percent of the city's jobs. If one considers just private-sector employment, the figures are higher still, rising from some 1.4 percent of the city's private jobs in 1958 to about 5.6 percent today. (And many of the city's new private-sector jobs, including those in health care and education, are taxpayer-supported, so they are wealth consumers, not wealth creators, like Wall Street jobs.)

While 5 percent of city employment may not sound like much, each Wall Street job generates a disproportionate share of city income—and that share continues to grow as the rest of New York's private economy stagnates. In 1969, the Federal Reserve Bank of New York has noted, the securities industry was directly responsible for 4.5 percent of city earnings. Today, that figure is about 20 percent, and due to New York's steeply progressive tax rates, the industry's share of personal-income and corporate-income taxes is even higher. And Wall Street is increasingly the source of new jobs and income growth. In the 1980s, Wall Street, with its single-digit share of overall employment, produced 17 percent of new jobs in the city and 23 percent of income growth; in the 1990s, it was responsible for 21 percent of new jobs and for 56 percent of income growth.

Each Wall Street worker creates at least two jobs in the city and one more job in the greater region today: lawyers, accountants, financial-data providers, PR mavens, waiters, BMW salesmen, and the like. New York employs more than 900,000 people in information services, professional services, and general financial services, many of whom are inextricably tied to Wall Street. (The Street also creates more jobs in the city's public sector, through its absurdly high city and state tax contributions.) Theorists can posit that New York is becoming a city based on media, entertainment, tourism, and real estate—but the fact remains that it is lost without Wall Street. As Harvard economics prof Edward Glaeser notes: "[T]he city's future appears to be linked to a continuing ability to hold that industry."

But the extraordinary growth in the stock market throughout the eighties and nineties allowed an already free-spending New York to grow complacent about its primary source of taxes and private-sector jobs.

Between 1982 and 2000, the U.S. was riding a long-term bull market: despite short-term cyclical downturns, stock prices grew robustly and steadily. During these years, the S&P 500 index and the Dow Jones Industrial Average grew sevenfold after inflation, or about 60 percent more each year than the expected long-term average. The NASDAQ grew more than 11-fold after inflation between its creation in 1984 and its peak in 2000.

Wall Street's run-up sprang in part from America's preeminence in the world in an era of globalization, and from technology and productivity advances. But there was another cause, too: the baby boomers, 78 million strong, created a demographic bubble in the markets. America experienced its bulge-bracket generation's peak productive years in earning, spending, and investing. Middle-class investing, as measured by assets flowing into stock mutual-fund assets, grew from about $100 billion in 1982 to $4 trillion by 2000.

Wall Street wealth, of course, buoyed Gotham's payrolls, with the city's securities-industry employment doubling to about 200,000 workers at the bull market's peak. It also buoyed New York City tax revenues—and spending. City outlays grew more than 50 percent after inflation during the long climb upward, propelled by social-services spending (welfare before the mid-1990s, and

Medicaid after that), even as Gotham's population grew by about 12 percent and its number of overall private-sector jobs grew by only 11 percent (including the growth in the securities industry).

But city leaders neglected to remember one thing during the market's relentless upward march: it wouldn't last forever. In fact, the modern history of the stock market is one of long periods of growth (interrupted sometimes by short downturns) followed by long periods of stagnation. Between 1969 and 1982, the S&P 500 actually *fell* by 64 percent after inflation.

Of course, in the seventies, unlike now, the nation faced persistent double-digit inflation. But today it faces a new set of problems, from increased competition for global talent and investment from India and China, to the continued failure to reform trillions of dollars in looming Social Security and Medicare liabilities before the baby-boom generation begins to retire six years hence. The generation that lifted the markets in the eighties and nineties could put a drag on them over the next several decades.

> **"Each Wall Street job generates a disproportionate share of city income—and that share continues to grow."**

This is a New York challenge as well as a national one, since Gotham has built its economy and its budget on a finite market trend. And city officials have not faced up to the real possibility that the long capital-markets party with its headquarters in New York may be over for a long time to come. Mayor Bloomberg, for example, has hiked taxes to fund spending increases of nearly 15 percent after inflation during his first term. He continues to budget as if a long-term bull market will resume any minute now after a five-year break.

Just as bad, Wall Street's wild gains throughout the eighties and nineties masked another trend. Even as New York's securities-industry employment has grown, and even as New York has become increasingly dependent on Wall Street's success for its own jobs and tax revenues, Gotham has steadily lost its *share* of national securities-industry jobs. This loss stems from permanent changes in the structure of the national securities industry that predate 9/11 by decades—changes that the city hasn't yet confronted.

Over the 30 years before the 1987 stock-market crash, the city's share of national securities-industry jobs steadily eroded by a little less than 1 percent a year. In 1958, New York boasted 43.2 percent of the nation's securities-industry jobs; by 1986, it had only 35.7 percent. After the '87 crash, as Wall Street sought to cut costs aggressively during a short downturn, this migration of securities-industry jobs became markedly less gradual. Since then, the annual rate of attrition in Gotham's share has tripled to nearly 3 percent (although industry experts believe that it has stabilized for now). Gotham currently boasts only 22 percent of the nation's Wall Street jobs—and the roughly 170,000 workers employed in the industry in the city today (about 30,000 industry jobs vanished after the tech bubble burst and after 9/11) surpass only modestly the 163,000 employed just before the '87 crash.

As George Monahan of the Securities Industry Association wrote shortly before 9/11: "It should be sobering to New York governing officials that from the stock market crash in 1987 until May of this year [2001], New York has gained a net of only 28,300 [industry] jobs vs. 287,800 in the other 49 states. In other words, less than 10 percent of industry job growth occurred in New York—a startlingly low figure."

But why? For a vivid insight into the changes wracking Wall Street, just look at the lesson playing out at the august New York Stock Exchange, the symbolic pillar of the industry and of New York's preeminence within it.

Much like New York City, the NYSE, for most of its 213-year history, didn't have to worry about the competition. Like Gotham, it derived its strength from its role as a central meeting place, and one industry can have only so many central meeting places. The NYSE was a not-for-profit entity where for-profit players could come together to do business for those who couldn't be there and who didn't have the information they needed to trade at the best possible price anyway.

But today, information is everywhere—and as for trading, much of the activity that once was done on the floor of an exchange is done over a computer network now. Says Ed Nicoll, CEO of institutional-brokerage firm Instinet (and, through Instinet's Inet electronic trading network, a NYSE competitor): technological advances over the past 30 years, and particularly over the past decade, "help to solve the problem that the NYSE was created to solve in the first place."

Indeed, over the past ten years, the NYSE has begun to lose its primacy in the capital markets, as technological, regulatory, and competitive pressures have trumped habit and history. Even as the NYSE has updated its own technology to compete, the exchange's market share of trading in its own listed stocks fell to less than 75 percent last October, down from between 80 and 90 percent in recent years.

Institutional clients that buy and sell securities—such as mutual funds, hedge funds, large banks, and investment firms—now have another choice, in the form of upstart electronic stock-trading networks called Electronic Communications Networks (like Inet and its competitors). Technology, helped along by changing regulations, ignited the growth in ECNs.

While large customers have long had limited options to buy and sell securities electronically rather than through human brokers and specialists, many didn't see the point of doing so until the 1987 crash—when they found that many institutional brokers simply didn't answer their phones. They then began to rely more on early electronic trading networks, but regulations lagged far behind emerging technology. The result was that institutional investors built what Nicoll calls a "secret market," where only they could see the prices, and they took advantage of price discrepancies between that market and the public market.

Not surprisingly, regulators didn't like this when they figured it out in the 1990s—and new regulations decreed that electronic markets had to be open to all traders. As a result, a generation of competing ECNs cropped up. New firms like Archipelago ("Arca") and Island (now Inet) invested in trading networks that throughout the late 1990s and early 2000s put intense competitive pressures on the old public markets like the NYSE, as well as on traditional brokers and traders.

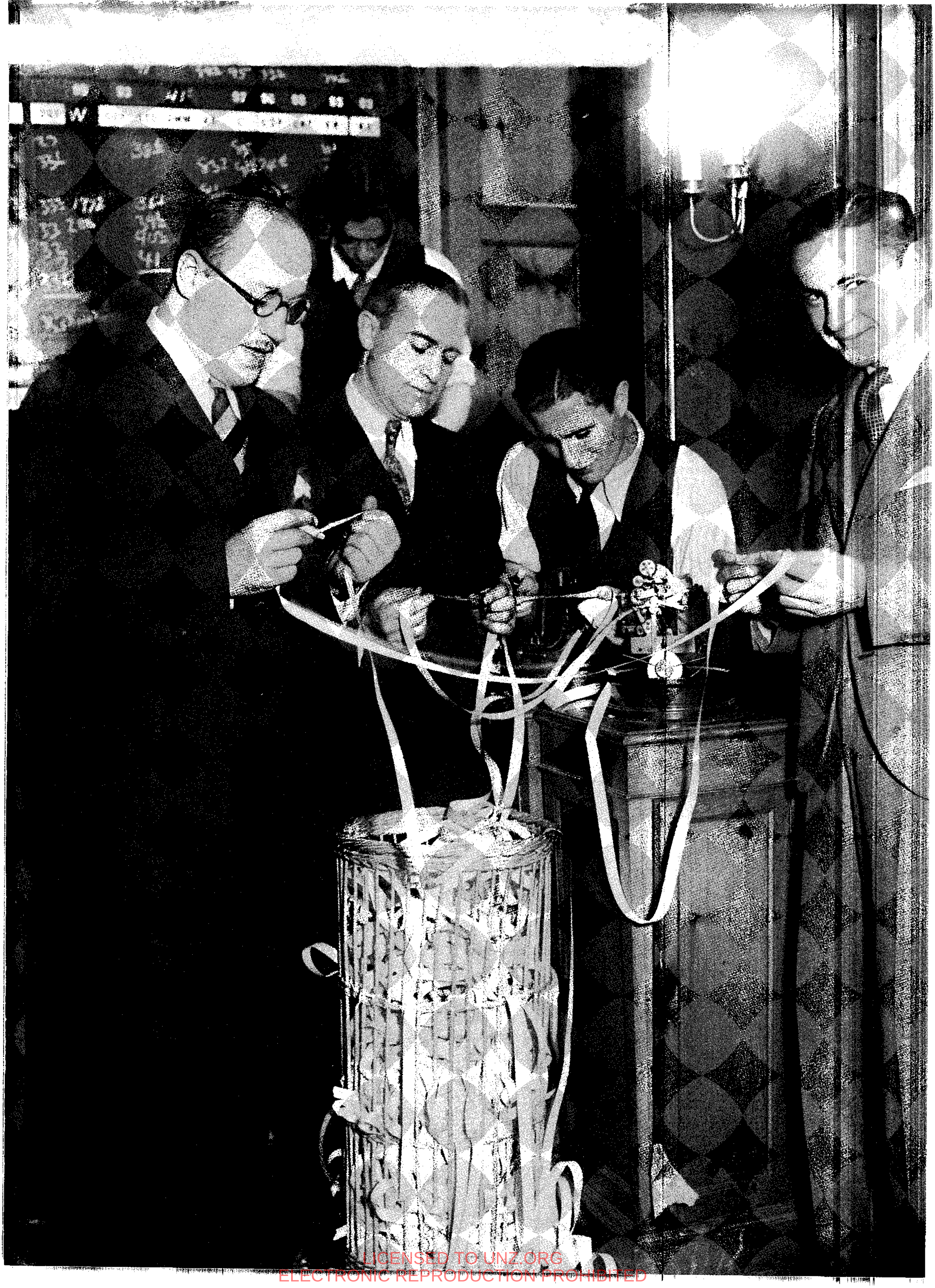
With few exceptions, computers can match buy and sell orders faster and better than humans can. Major firms have adapted to the new technology (and lower costs) quickly, sending as much as 50 percent of eligible orders today to ECNs rather than to the NYSE. Computers, and those who run them, don't need to be located in Manhattan.

The NYSE stood to lose much if it failed to evolve. It had one option available to it that's not available to New York City: buying a piece of the competition. Its members have approved a merger with one of those upstart electronic trading firms, Chicago-based Archipelago, to give clients a wider choice of where and how to trade stocks. Because the NYSE needs money to grow, it soon will become a publicly held, for-profit company beholden to shareholders.

What will happen to the 1,000 NYSE employees and the 3,000 people who work on the exchange floor for other firms? The NYSE posits that its merger will increase business for stock-specialist firms by allowing them to diversify into trading products that couldn't be

New York City has lost its monopoly on financial information.

BETTMANN/CORBIS



traded on the old NYSE, such as unlisted stocks, derivatives, and exchange-traded funds. We'll see—but right now, the traditional specialist firms that operate on the NYSE floor are under pressure. The shares of Labranche & Co., for instance, are down more than 70 percent in five years; one analyst who covers the company, Michael T. Vinciquerra of Raymond James (who, by the way, works in Atlanta, not New York), says that he's not sure how specialist firms will find a way to share in the benefits of the NYSE merger, since much of the projected post-merger trading-volume increases at the NYSE will probably go through electronic channels.

For with the NYSE's evolution will come yet more automation. "We have to automate more of what [NYSE floor workers] are doing, and we have to eliminate a lot of the keystrokes. We need to give the specialists more time to focus on where they really do add value, which is dealing with order imbalances, dealing with blocks or large pieces of stocks and dealing with unusual events," NYSE president John Thain said in November. Investment bank Bear Stearns, which owns a major specialist firm that does business on the floor, says that it expects to compete in a "more efficient and more automated . . . business" there.

THE ART ARCHIVE/CULVER PICTURES (2)

The Curb Exchange, an outdoor market for buying and selling stocks (above), moved inside and became the American Stock Exchange (left).

One harbinger of employment prospects for some who work at the NYSE: when Instinet bought an Arca rival (the Island ECN) in 2002, the combined firm's electronic trading unit had 1,075 employees. Thanks to technological advances and other cost savings, the company now has 82 highly paid employees (all in Jersey City), even as trading volume continues to rise. Indeed, it hasn't taken the NYSE long to start compressing its own jobs to cut costs: even before officially merging with Arca, it announced a layoff of 60 middle-income staffers, including many floor workers who routed paperwork through the NYSE's trading stations. This move shouldn't come as a surprise—for major investment firms have bought stakes in regional stock exchanges such as Philadelphia's in recent months, just to send the NYSE a message ahead of its merger: keep cutting trading costs for us, or we'll do it for you.

The NYSE's historic merger isn't the beginning of a trend but just one milepost in an ongoing one. Over 30 years, a diverse array of highly profitable business lines on Wall Street, from stock brokerage to stock trading to debt and equity underwriting, have been ground down to razor-thin margins by technology, competition, and regulation. What's left are just a few spectacularly profitable business lines and many low-margin businesses—and an industry that can no longer afford armies of support employees in expensive New York City.

As Brad Hintz, a securities-industry analyst at Sanford Bernstein, has found, one standard measure of performance, a company's return on its equity (ROE), has declined steadily and steeply throughout the securities industry over the past 25 years, from about 50 percent in 1980 to 20 percent in the mid-nineties to the high teens today. "These declines stem from troubling and persistent secular trends that will not solve themselves anytime soon," Hintz notes.

How much have returns on some business lines shrunk? Retail stock commissions per share have fallen 73 percent since 1980, while costs for large institutional traders have fallen by 60 percent, from about 10 cents in the 1980s to about 4 cents last year. Since 1992, the average fee for underwriting debt has fallen 30 percent, and is down 16 percent on underwriting initial public stock offerings (IPOs).

The inexorable squeeze on Wall Street's profits really began over 40 years ago, with the advent of mutual funds. In the 1950s and sixties, computing advances allowed money managers to construct well-diversified stock portfolios on a mass scale and market them to retail investors. Compared with stock commissions, fees on these new mutual funds seemed cheap—and lots of individual investors, including affluent middle-class ones who might otherwise have relied on high-priced brokers, flocked to the funds in the 1960s. Mutual funds, in turn, used (and are still using) their institutional heft to drive their own trading costs down, cutting into that slice of Wall Street profits. Today, mutual-fund managers in turn find *themselves* squeezed by, among other things, even cheaper index funds, which give middle-class clients access to the broad markets without forcing them to pay high fees to fund the high salaries of mutual-fund managers.

Mutual funds and other large institutional investors (including pension funds) gradually helped to drive down trading costs until the ECNs took over—steadily shrinking a relatively stable source of industry profits and of New York jobs. But even as this shrinkage was occurring, regulators detonated Wall Street's "Big Bang" in 1975, abolishing fixed (and high) commissions on individual-customer stock trades. The regulators thus introduced discount stock trading to the average investor as a new form of competition to full-service (and expensive) mainstays like Merrill Lynch. While the discount brokerage industry has strong ties to New York, its major firms, including industry leader Charles Schwab of San Francisco and Ameritrade of Omaha, are more often than not headquartered elsewhere, just as the mutual-fund industry (growing out of a pooled Harvard faculty investment fund in the 1890s) is headquartered in Boston.

One seemingly innocuous change that took place in 2001 has further squeezed margins for institutional traders: the regulators' move toward decimalization of the equity markets. Previously, stocks were traded in increments of one-eighth; today, they're traded in increments of one-hundredth, reducing the minimum spread—a major source of profit—on a trade.

New York securities firms face additional pressures from globalization and from changing regulations, as European and Asian banks seek to do more U.S. investment-banking business and as commercial banks, once barred from the investment side of the industry, have joined up to throw money around.

When profit margins began to shrink, Wall Street's leaders reasoned that they had better shrink some of their costs, too, and—particularly after the '87 crash—they moved to cut staffing costs aggressively and permanently. As one Wall Street titan reportedly put it in the late eighties, "Any job that doesn't have to be here, shouldn't be." Supercharging the cost cutting was new, cheap communications technology that made possible the wholesale automation and decentralization of a large swath of New York's middle-class Wall Street jobs.

Where were most of the new jobs in the industry created over the past two decades, then, if not in New York? (Some jobs have just vanished to automation, just as bank tellers have fallen victim to the ATM.) A decade ago, the industry solidified itself firmly in the New York *region*. Many jobs went to New Jersey—lured by generous tax breaks. The Garden State's securities industry nearly tripled between 1990 and 2001 (and continues to grow faster than New York's after 9/11). Just in the past decade, Citigroup Global Markets, Goldman Sachs, Instinet, JPMorgan Chase, Knight Equity Markets, Lazard Frères, Lehman Brothers, Merrill Lynch, Morgan Stanley, SG Americas, and TDWaterhouse Securities have created 11,000 jobs in northern New Jersey. Meanwhile, back across the river in lower Manhattan, developers have carved 15,000 new apartments out of old office space.

During the current recovery, though, investment firms are ranging further afield. JPMorgan Chase announced in early December that it would create 4,500 new securities-industry jobs in Bangalore, India, by 2007, joining UBS (with 500 jobs there) and Goldman Sachs (with 750). Twenty-five years ago, most of those jobs would have been created in New York; 15 years ago, perhaps half of them would have, with the rest going to places like New Jersey and Florida.

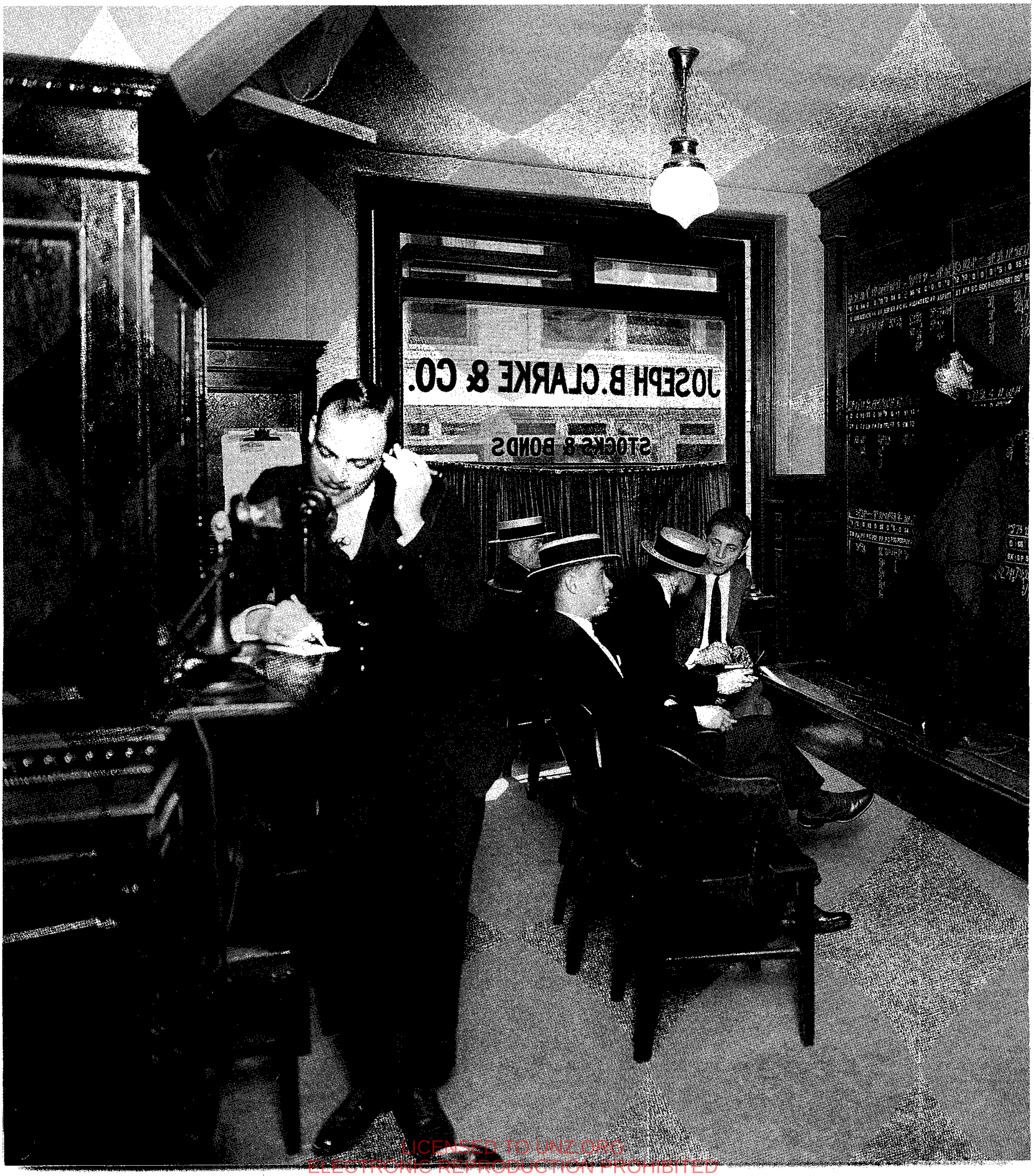
"New Jersey's securities industry nearly tripled from 1990 to 2001 and continues growing faster than New York's."

Wall Street's first cost-cutting target was its back office. New York viewed this job loss with a certain fatalism; despite efforts in the late eighties and early nineties to use subsidies to trap low- and middle-income securities jobs at outer-borough campus sites like Brooklyn's Metrotech, city officials have long seemed resigned to the fact that Gotham is too expensive for rational corporate executives to house support-level employees there.

But for the past decade, Gotham's securities-industry employment losses have been, "in large part, highly paid, highly skilled, former New York City jobs," as the Securities Industry Association puts it. Morgan Stanley and Jefferies, for example, have high-level trading operations in Westchester County and northern New Jersey, respectively, staffed by employees who earn mid-six figures and more. Nor are the jobs that JPMorgan Chase is creating in India simple telephone call–center jobs worth $7 or $8 an hour in the U.S.; employees there will do support work for high-level derivatives and structured-finance products. Bear Stearns proudly notes that it has hired workers in cheaper overseas labor markets to put together complex presentations for its investment bankers, and that it plans on hiring more such workers to do analysis for its banking teams. As technology and competition squeeze more and more once-lucrative product lines, and as ever-more-sophisticated jobs can be automated or moved away from centralized locations, Wall Street will have to cut costs more deeply and more creatively.

Even Wall Street's army of securities analysts is shrinking. "In-house research departments are historically expensive to maintain," notes the

Gotham Needs Wall Street; Does Wall Street Need Gotham?

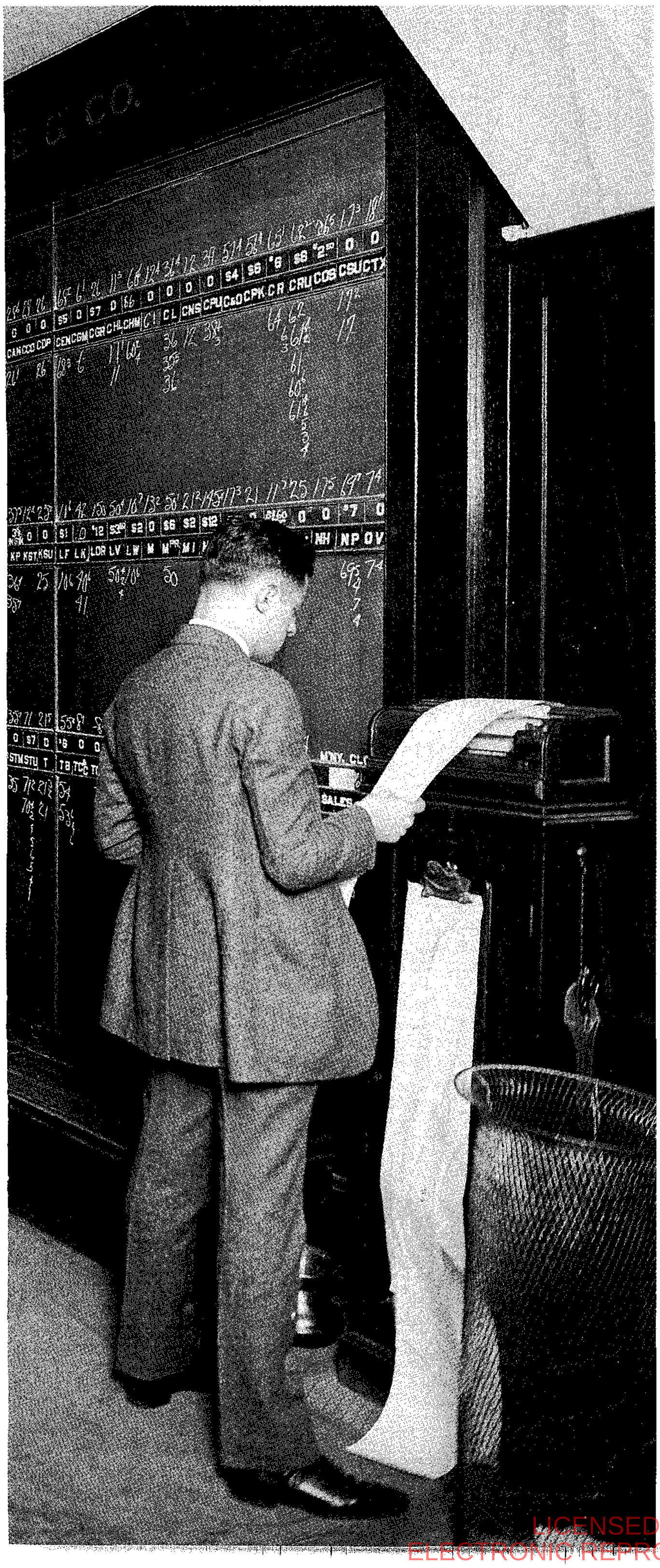

JOSEPH B.CLARKE & CO.
STOCKS & BONDS

SIA's Kyle Brandon. "Some firms have stressed lowering their costs by cutting staff . . . and outsourcing routine number-crunching tasks to services located in India and other low-cost locales." A New York–based start-up, Copal Partners, has begun hiring analysts in New Delhi to support Wall Street investment bankers. Copal has 175 analysts there, and hopes to have 400 within a year. This is marginal job growth, but much of it formerly would have occurred in New York City.

What's left on New York's Wall Street, then, are the highest-level, highest-paid stars—the top people in the traditional investment-management firms and investment banks, the mergers-and-acquisitions and leveraged-buyout princes, and a crop of new high earners as well. So in Manhattan, the securities industry has fewer workers, each of whom earns more money—because the workers left in the city are mostly only the ones whose productivity can justify the high cost of being here. "New York has become a high-end boutique for Wall Street," notes Manhattan College finance prof Charles Geisst, who wrote a book on the history and current state of Wall Street. Wall Street firms today look for individuals with "courage, imagination, and education," said one industry veteran—not for legions of entry-level junior bankers, traders, clerks, and secretaries.

The proof that only the most productive jobs remain in Manhattan is in the numbers: New York, with only one-fifth of the nation's securities-industry jobs today, has kept a full half of national securities-industry compensation. Even at the top, Wall Street is becoming increasingly frugal with its hiring: Bear Stearns notes that its ratio of junior bankers to senior bankers used to be about seven to one; today, it is four to one.

Wall Street, being Wall Street, still finds ways to make good money, even if it can't make as much simply by processing trades,



BROWN BROTHERS

Brokers' commissions, once fat, have grown paper-thin.

underwriting debt, and giving advice to clients. To generate their outsize profits, though, even the most elite firms—the ones that still create jobs in New York—often bet more of their own capital than they once did. Investment banks today "make much of their money by taking risks," says Salomon Brothers veteran Richard J. Schmeelk, now a partner at private-equity firm CAI Managers & Co.

Such risk taking increasingly occurs even in traditional investment banking. Say that a major corporation in the business of building and operating power plants hires Morgan Stanley, for a large fee, to underwrite a bond to finance the construction of a new plant. In return for the fee, the company might also expect Morgan to take on some of the venture's risk. It may, for example, expect Morgan to agree to purchase some of the power generated from the company's plant on a long-term basis, which Morgan will then sell off through its vast commodities-trading operations.

Twenty years ago, Morgan likely would have earned the same fee for the much safer and less complex task of merely underwriting the bond. Back then, it only had to assess the credit quality of the power company and perhaps the long-term outlook for power sales in the new plant's area. Today, it must also try to forecast the movement of power prices during a given time frame.

Wall Street firms long have had cowboy teams that thrived on much greater risk taking than their comparatively staid colleagues in research, underwriting, and advice proffering. But as margins on those more traditional products grow thinner, investment banks must depend to a much greater extent on the money generated from risk-taking ventures.

Industry leader Goldman Sachs's recent profit trends bear out this point. In 1998, income from activities that included trading on, and investing, the firm's own capital—relatively risky compared with offering advice to merger clients—produced only about 28 percent of net revenues; money from more traditional investment banking and asset management generated the rest. By 2000, trading and principal investments accounted for nearly 40 percent of Goldman's net revenues, as well as 48 percent of pre-tax profits. In 2004, these activities produced nearly 65 percent of net revenues and 75 percent of pre-tax profits. As Goldman notes: "We have been committing increasing amounts of capital in many of our businesses and generally maintain large trading, specialist, and investment positions."

One measure of the investment banks' increased appetite for risk: the average "value at risk" across the industry—that is, the amount of money each bank estimates it would lose in a given time period in a given loss scenario—is up 17 percent over the past year. And even this is not an adequate measure, because banks derive their value-at-risk figures in part from simulating what future losses would look like based on past events, like generals who are always fighting the last war.

As part of their new embrace of risk, major investment banks over the past several years have focused on devising and trading ever more exotic products, as opposed to plain-vanilla stocks and bonds. Through a credit derivative, for example, a bank can now "unbundle" the risks for a client who holds a certain investment.

Say that a client owns a General Motors bond and, though he likes the interest rate, is worried that GM will go bust and the bond will lose much of its value. Ten years ago, he would have had to sell the bond to assuage his worry; today, he can buy a type of derivative option that would allow him to collect at least a percentage of his loss in the event of a bankruptcy (if it occurs within a given time frame) from the institution or person who sold him the GM credit-derivative option, who is in turn betting that the price he received for the derivative option amply compensates him for the risk.

At Bear Stearns, volume at the firm's credit-derivative desks is up 800 percent in two years, while employment on those desks is up 30 percent. Investment banks are beginning to offer similar credit derivatives that allow investors in a hedge fund (really just a lightly regulated pool of investors' money aggressively managed by a private partnership) to purchase over a trading desk the option to collect cash if the fund performs poorly within a certain time frame.

It's difficult to calculate the day-to-day value of such exotic products and the aggregate risk of an individual firm's own holdings in them. The large investment banks say they're not worried: they can handle the risk because they diversify their investment and trading portfolios well. If a credit derivative on one product becomes worthless (or worse) in the event of an oil shock, the theory goes, that same shock will simultaneously make a credit derivative on another product suddenly lucrative, balancing the loss. Trouble is, in times of severe shock, investors could lose confidence in *all* of these relatively new and opaque products, at least for a crucial few days.

> **“The average 'value at risk' across the industry is up 17 percent over the past year.”**

Further, to earn above-average profits today, investment banks not only devote more of their own capital to exotic trading strategies and products; they also bet more of their own capital on longer-term outside investments whose value and risk are equally hard to determine. Some banks invest heavily in outside hedge funds and in other private-capital ventures. Bear Stearns recently noted that its investments in outside private-capital funds are becoming more important to its bottom line; Merrill Lynch chief Stan O'Neal said in December that Merrill would invest more money next year in external private-capital funds.

Wall Street's seemingly permanent embrace of increased risk is in one way positive for New York. It is partly why firms like Goldman don't move even their top workers to lower-cost areas to boost profits—which would be the death knell for New York's economy. But Gotham continues to dodge that bullet because Wall Street's elite echelons—those who deal as much in human capital as in financial capital to structure today's ever more complicated deals—continue to thrive on urban density.

The Street elite makes money today by manufacturing ideas. Every quarter, someone must come up with a new scheme for an exotic derivative product before the competition does. Someone else then must figure out how to insulate the firm from the potential losses that the new product could precipitate. The industry thus needs top talent—not (as 30 years ago) the bottom quarter of the Yale class—and the competition for brainpower is fierce.

To fill these jobs, “outsourcing to India doesn't work,” says Instinet's Nicoll. To take just one field: “Everyone is tripping over each other to hire derivatives professionals. . . . The market is growing so quickly and the talent pool is relatively small. There is also competition for traders, with the hedge funds luring so many talented people away from the Street,” notes *Investment Dealers' Digest* editor Jeff French.

This is good news for the New York region and for the city: Gotham can draw on a 16-million-strong labor pool of relatively well-educated people connected by relatively efficient public transportation, and it is a perpetual magnet for global talent. “The [financial] industry is able to evolve because of its intellectual capital,” says Rae Rosen, senior economist at the Federal Reserve Bank of New York. “If it moves, it won't find that.”

A firm that needs to beef up its derivatives or its commodities-trading desks can look across midtown and offer more money to lure a successful team from a competing firm. What Berkeley prof AnnaLee Saxenian has noted about a key ingredient of Silicon Valley's innovation and success goes for Wall Street, too: high-level staffers can change jobs without uprooting their families or even altering their commutes. Any investment-banking firm that moved too far from Manhattan would lose ready access to this talent pool, dulling its competitive edge.

It would also lose the opportunity for everyday face-to-face interactions with clients. A client from Seattle who plans on hiring an investment bank to structure a complicated deal, for example, wants to fly to New York and walk from block to block along Sixth Avenue to meet with competing banks and then seal the deal over a fancy lunch. He's not going to take a limo to New Jersey or a plane to Florida to meet with the one bank that has moved away. Wall Street also depends on New York's dense network of talent in other fields—from lawyers to PR folks to event planners. Investment banks that are productive enough find that it still pays to stay in Manhattan.

Even so, the technology that has helped erode the profit base of the old Wall Street has created another crop of high-flying finance jobs that are not as wedded to New York City as traditional high-end investment banking continues to be. Computing technology, comparatively light regulation, low trading costs, and half a decade of record-low interest rates have fueled the creation of thousands of hedge funds, private-equity funds, asset-management firms, and the like. In just ten years, 2,080 hedge funds with assets of $76 billion have grown to 7,000, with nearly $1 trillion of assets.

Many hedge-fund managers are experienced researchers and bankers who, in a different era, would have spent their careers at a major Manhattan-based firm like Morgan Stanley. Now, an experienced asset manager doesn't need the backing of a corporation; he can manage assets from anywhere—so New York does not have a lock on these jobs. Moreover, asset managers who do lead their operations at major investment houses aren't wedded geographically to their firms, or, for that matter, to the city. Merrill Lynch isn't going to fire a star investment manager just because he decides he'd rather work in Greenwich; the firm likely would help him find an office there and provide him with the technology he needs.

Same with top-flight traders. A Morgan Stanley group, at its own choice, now buys and sells contracts on oil, gas, electric power, and other commodities from a Westchester County office building. They don't just trade commodities as a neutral agent for clients while assuming minimal risk for the firm. Morgan actually physically owns millions of barrels of oil and its own power plants, with all the risk that entails. According to the *Wall Street Journal*, Morgan controls about one-quarter of America's home-heating-oil reserves and is an aggressive seller of its own electric-power supplies to wholesale clients around the nation; the firm also controls oil-storage barges around the world. The Westchester high fliers sometimes go as far as buying the rights from major oil producers to sell the companies' oil even while it is still in the ground.

The top talent who do choose to stay in New York do so in large part for quality-of-life reasons; they enjoy living here and find it profitable to do so. For many of the industry's wealthy leaders, New York's cultural legacy—its museums, grand apartment buildings, parks, galleries, concert halls, and private schools, to name a few—continues to outweigh the city's high costs. That's why New York is home to six of the top ten hedge funds, and was home to three of the five largest start-up hedge funds last year.

But industry veterans who don't mind commuting to the city to get their cultural fix instead of commuting to get to their jobs (as well as those cultural philistines who just don't care) have the option to set up shop away from the city today; their technology is portable. That's why Greenwich now rivals New York as a hedge-fund hub; morning commuter trains from Manhattan to Connecticut are just as crowded today as the trains going in the other direction.

New York City, like the NYSE, now must work hard to keep much of the business that it once took for granted. So what can the city do to keep Wall Street's elite anchored in New York, and to infuse new energy into its economy, so that it is not as dangerously dependent on a single, volatile, and mobile industry?

New York's high marginal state and city tax rates put the city at a greater disadvantage now than they did 20 years ago, because top earners aren't stuck in New York. So New York can start with the obvious: cut marginal income taxes. Instead, New York has done the opposite, with personal-income and corporate tax revenues, largely derived from Wall Street, rising from 15 percent of Gotham's tax revenues in 1970 to 34 percent today.

Moreover, New York City levies an extra tax on business ventures that are formed as partnerships, not as corporations. While this 4 percent unincorporated business tax does offer an exemption to investment partnerships, including hedge funds, structuring a company properly to ensure that it escapes the tax is complex. High tax rates keep entrepreneurial industries away, so New York becomes more dependent on Wall Street, even as Wall Street itself becomes more dependent on risk-taking activities for its own profits. Thus, even with fewer securities-industry jobs, New York is more vulnerable than ever to sudden shocks within the industry. Because its securities-industry workers are the best-paid in the business, Gotham is more dependent than ever on income from highly volatile Wall Street bonuses. Between 1987 and 1989, cuts in Wall Street bonuses slashed income-tax revenue by about $14 million, or half a percent of such revenues. Between 2000 and 2002, cuts in bonuses slashed income-tax revenue by $250 million, or 5.6 percent.

In addition, New York should encourage office development, starting with allowing developer Larry Silverstein to rebuild the World Trade Center. More real estate means cheaper real estate—and more start-up businesses. And Gotham should get the Number 7 subway extended to the Far West Side, to jump-start free-market development there. Meanwhile, the city needs to slash taxes on commercial real estate, along with its bizarre tax on commercial rents.

"More than a few Wall Street workers noted during the transit strike that they easily could work at home."

Wall Street's evolution has another important implication for Gotham: New York has little room for error today on governance issues like crime, public order, and the quality and reliability of public transportation.

In the seventies, eighties, and early nineties, Wall Street firms and workers stuck it out in New York—and helped the city to recover from its fiscal and social problems—in large part because they had no choice. But many wealthy taxpayers who once would have had to weather incompetent government in Gotham will not have to do so the next time around. Even those bankers, managers, investors, and advisors who love the city and who thrive on urban density would have the option to move away if the intangible costs of doing business here—including crime and inconvenient transportation choices—began to outweigh the benefits. Density in specialized sectors of the finance industry can be created elsewhere: just look at Greenwich.

This means that events like December's mass-transit strike could have a greater long-term effect on New York today than they would have had 25 years ago. More than a few Wall Street workers noted during the strike that they easily could work at home. If the threat of business interruption makes it too difficult for New York firms to accomplish their day-to-day business productively, those firms easily can station workers elsewhere.

New York always must remember: its top earners and its top firms are here only for as long as New York continues to be a profitable and pleasant environment for them. ▨

What Bloomberg Could Still Accomplish

The mayor needn't
waste four more years.

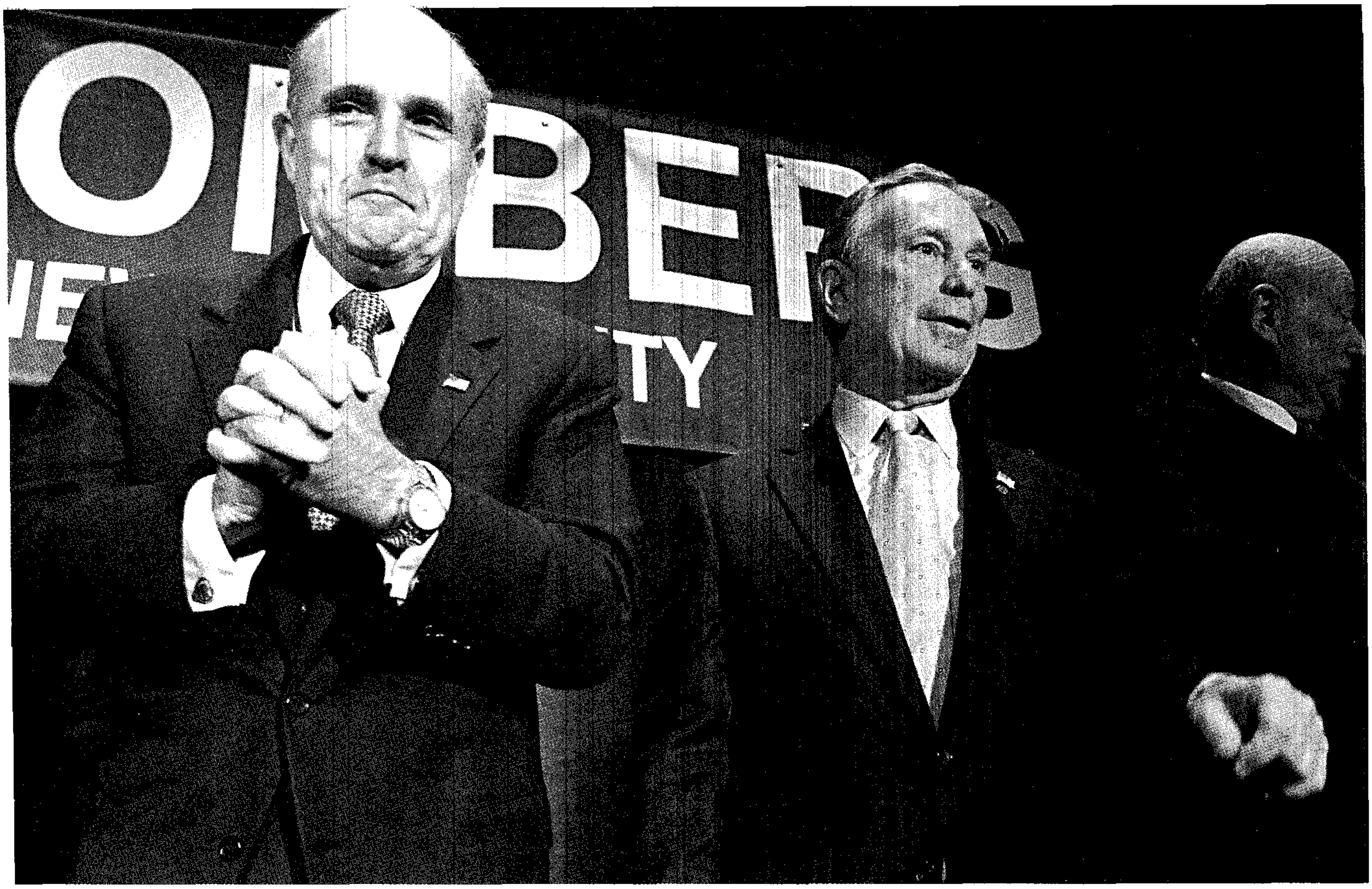
MIKE SEGAR/REUTERS/CORBIS

Steven Malanga

New York City mayor Michael Bloomberg is beginning his second term after a landslide reelection even more stunning than his surprise victory four years ago. Like the mayor, the city has come a long way since he took office in 2002, when New York was still reeling from the devastating attacks of 9/11 and Bloomberg was only a novice at governing. Today, tourists are flocking to the city in near-record numbers, and construction scaffolding pervades the midtown Manhattan streetscape, evidence of a city renewing itself. After a precipitous tumble, Wall Street's business is nearly back to where it was in the go-go late 1990s, and that prosperity has helped fill the city's tax coffers, producing a surplus and sparking tax rebates. Crime remains low, and New York is still one of the safest big cities anywhere, a tribute to the mayor's good judgment in naming Ray Kelly police commissioner.

What could be wrong, then?

Plenty, it turns out. Most worryingly, New York's prosperity and financial security are barely skin-deep. The city's post-9/11 fiscal recovery has mostly resulted from two outside forces: investment tax cuts in Washington that spurred Wall Street, and a nationwide housing and mortgage-refinancing boom, prompted by remarkably low interest rates and yielding



Mayor Bloomberg seems loath to profit from predecessor Rudy Giuliani's example.

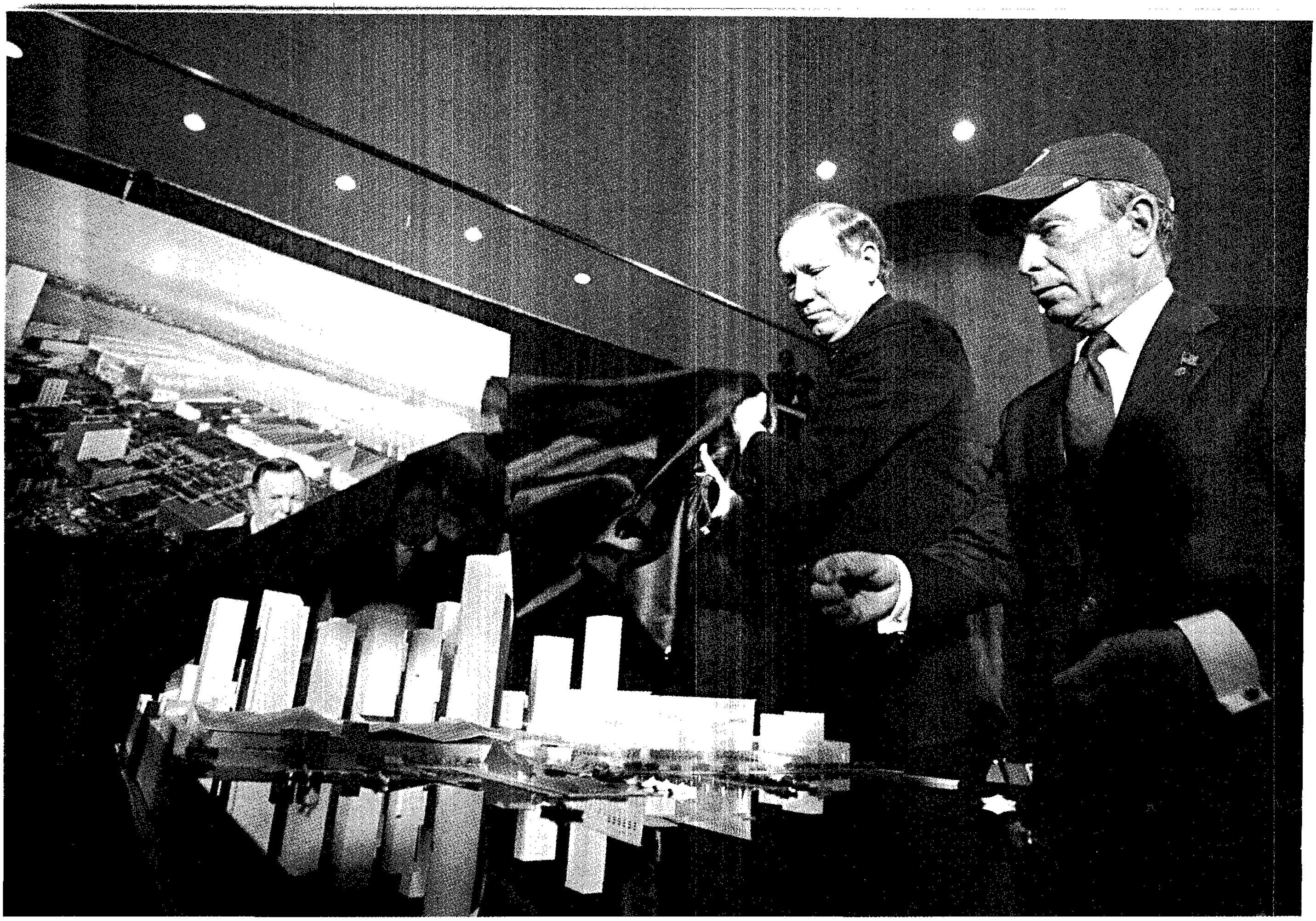
record collections in the city's mortgage and property transfer taxes. But these unusual and unsustainable revenue jolts have barely kept pace with Gotham's record spending. The result is a fiscal house of cards that could collapse at the slightest tremor.

Weighed down by a huge workforce, opulent public-employee benefits, and contributions to the nation's most expensive Medicaid program, New York's budget during Bloomberg's first term swelled by some 28 percent, about three times the rate of inflation, and projections suggest that spending will keep rising at least this quickly, unless drastically curbed. Though the mayor's reelection campaign touted his fiscal stewardship, some of his first-term actions, especially the big wage increases that he has given to city workers, and his preference for solving budget problems by raising taxes rather than by slowing spending, have fashioned an unsustainable business model for Gotham.

As a result, despite the good times, the city faces a $2.3 billion budget deficit next year and $4 billion–plus gaps in subsequent years, already prompting new mayoral calls for more tax hikes. Should Wall Street or the national economy merely pause to catch its breath rather than continue at the torrid pace of the last two years, New Yorkers will quickly discover how fragile was their economic security under Mayor Bloomberg.

Bloomberg, whose budgetary pronouncements in his more candid moments make clear that he understands the problem that the city faces, now confronts a stark choice about what kind of second term he wants. He can hope that Wall Street stays solid enough that the fiscal thin ice he's skating on doesn't crack while he's in office, leaving the problem to the next mayor. Already his unrealistic calls for reinstituting the commuter tax, as well as his willingness to postpone city contributions to employee pension plans, suggest that this is the course that he will take. He will then go down in history as the mayor who set the stage for the city's latest fiscal breakdown, rather than the mayor who helped New York recover after 9/11.

But even now Bloomberg could use his second term to become a genuine reformer in the mold of his predecessor, Rudy Giuliani, an urban trailblazer who overturned the conventional wisdom and battled the city's entrenched interests to



As his obsession with a West Side stadium showed, Bloomberg believes that government central planning, not the free market, is the engine of development.

achieve his aims. Elected twice without the help of the city's special interests, Bloomberg has no reason not to become that kind of reformer in his second term. In addition to maintaining a low crime rate and ensuring that other Giuliani-era reforms remain in place, the mayor can start to put the city's fiscal house in order. That would mean changes in the city's pension and benefits systems, outsourcing and competitive bidding for some services, deregulation of the bureaucratic codes and rules that hamstring local businesses—and passing the resultant savings to taxpayers through broad-based tax cuts that make the city more economically competitive, by contrast with the narrow and politically motivated tax rebates of the past few years.

Achieving such changes will require a toughmindedness absent from Bloomberg's first term. But Giuliani demonstrated that they are eminently doable. True, Giuliani ruled in a more confrontational way than Bloomberg, never accepting that parts of the budget, or existing ways of doing things, were beyond his control because they were ordained by contracts or mandated by Albany. Early in his tenure, for instance, when Giuliani sought to merge the city's housing and transit cops into the main police force to save hundreds of millions a year and make the force more effective, the state legislature, at the police union's behest, balked, until Giuliani simply threatened to fire the entire housing and transit force and rehire them as city cops if the legislature didn't go along. Similarly, when sanitation workers, who had worked for several years without a contract under Giuliani's predecessor, David Dinkins, resisted signing a contract that included productivity and staffing changes that would save hundreds of millions of dollars, Giuliani threatened to contract out city routes to private carriers, prompting a quick deal. Such bold and decisive moves helped Giuliani close big budget gaps early in his mayoralty without raising taxes.

Bloomberg doesn't play political hardball like this; indeed, he seems to relish the favorable press comparisons of his conciliatory governing style to Giuliani's tough approach. But without taking responsibility for wielding the considerable powers of his office energetically, Bloomberg will ultimately take the blame for a Gotham

GREGORY BULL/AP WIDE WORLD PHOTOS

financial meltdown, even it if occurs on the next mayor's watch, as former mayor Lindsay is now almost universally condemned for the fiscal crisis that ensued after he left office.

Even with the mandate that his landslide victory has given him, it's not likely that Bloomberg will completely change stripes in his second term and use his political capital to pursue dramatic reform. But he can still send the city on the road to fiscal recovery with changes that don't require a heroic or pugnacious governing style.

“Gotham needs to get control of its pension and benefit outlays, which have soared by $3.9 billion in four years.”

Employee costs. New York City desperately needs to get control of its compensation costs, especially its pension and benefit outlays, which have soared by over 70 percent since 2002 and now cost the city a staggering $9 billion a year, nearly 25 percent of Gotham's budget. Mayor Bloomberg inherited many of the benefits and entitlements that have created this fiscal mess, and the state legislature (in its usual fashion) has lavished on more without his consent, but Bloomberg has added to the problem by approving union contracts with big wage increases, which translate into higher pensions. His new teachers' contract, for instance, provides the biggest pay boost to senior teachers nearing retirement, ensuring even heftier pensions for workers whose benefit packages already far outweigh the private sector's.

A big impediment to savings in this area is that benefits are locked in by contracts, and the mayor, during his campaign, signed some new long-term deals with unions. In addition, many benefits—such as retirement at age 55 and health-care coverage that requires no employee contributions—are state-legislated and can only be changed in Albany, where unions have enormous sway. Even so, a determined mayor can effect change. One place to start is with benefits directly under city control. For instance, Gotham pays the full cost of its retirees' health coverage, including premiums for Medicare coverage of doctors' services and outpatient treatments, which 90 percent of private-sector retirees pay for themselves. The city itself could unilaterally stop paying for this coverage, which costs about $800 per retiree annually, without going to the state legislature. That would save about $150 million annually now, and much more later.

Another relatively nonconfrontational strategy is to roll back benefits that don't affect current workers, thereby limiting political opposition. For instance, New York can bargain to rationalize the administration of city-funded employee benefits, such as dental and vision plans, now handled by 83 separate local union benefit funds. A city comptroller's audit two years ago found that the extremely inefficient plans soak up as much as 10 percent of nearly $1 billion in taxpayer contributions for administrative costs. The city could demand that unions consolidate administration of the plans and cap costs, and it could then reduce its contribution for these benefits accordingly, saving close to $100 million a year. Such an efficiency move would do nothing to deprive members of benefits, though it would shrink the patronage empires of union officials.

Similarly, the mayor could push to switch future public employees to a defined-contribution retirement program, in which the city has no open-ended commitment beyond the annual contributions that it makes during a worker's career. Such plans, standard in the private sector, are increasingly common in the public sector. Since a switch would only cover new hires, the mayor can advocate for it without taking anything from current employees, and indeed by making the case to current workers that the city's future solvency, as well as their job and pension security, depends on such savings. A defined-contribution plan with an annual city contribution of 7 percent of a worker's salary would save $45 million next year, $85 million in 2007, and so on, the Independent Budget Office calculates.

Medicaid. New York State has by far the country's largest Medicaid system—much bigger even than more populous California's—but not because the Empire State has more poor to serve. Rather, New York's Medicaid system has broader eligibility, offers more services, and pays higher reimbursement rates than other states. Unlike other cities, which pay nothing for Medicaid, Gotham must pay a quarter of the cost of this huge program—over $4 billion a year. And because Medicaid is a state-controlled program, the city can do little on its own to cut it. But the mayor can loudly and persistently pressure the state to cut costs. In the meantime, city administrators who enroll applicants into this means-tested program can tighten their procedures for checking eligibility, which is based on income levels. When the Giuliani administration instituted tougher screening of welfare applicants and recipients, it discovered that tens of thousands were ineligible—as is typical with means-tested programs. The city is likely to find something similar under Medicaid.

The Medicaid crisis, also weighing down the state budget, is sure to become an issue in this year's gubernatorial race, so the mayor can use the power of his endorsement to extract promises of reform from a new governor. One sane change that Bloomberg should push would be to eliminate premium services like dental care and transportation to and from doctors' offices and clinics, something that few other states offer. A recent *New York Times* exposé illustrated how patients who don't need the ambulette services often abuse them, with the connivance of the providers. Ending these two premium services alone would save the city some $70 million annually.

Another service whose growth needs reining in is home health care, originally designed to save money by allowing seniors to live in their own homes rather than in nursing homes. Now that the program pays personal-care workers not only for medical services but for shopping and cleaning, too, it gets billed for an average of 30 hours per week, compared with a national average of 11 hours weekly. Eliminating reimbursement for such nonmedical services might save the city as much as a quarter of a billion dollars annually.

The mayor could also press for a cap on rising reimbursements to hospitals, nursing homes, and pharmacists. The state's Medicaid program pays these politically powerful players far more than other states do. One study found that the average bill for a Medicaid hospitalization in New York is 75 percent higher than in California and Texas, because New York pays more for a procedure and allows Medicaid to pay for more hospital services than other states. Outsize nursing-home reimbursements average 29 percent more than the national benchmark. The state pays pharmacists two to three times more than other states for many drugs and often allows doctors to write prescriptions for expensive drugs rather than less costly alternatives. Bringing these expenditures in line with national averages (adjusted for New York's higher costs) might save the city up to $1 billion annually.

More competition. Though the mayor touts his administration as "businesslike" in its efficiency, he has neglected the most basic management principles of competitive bidding and outsourcing, measures that other mayors and governors around the country have embraced. What makes this failure even stranger is that outsourcing and competitive bidding are things that Bloomberg can often do on his own authority, without approval from Albany or unions. Former Indianapolis mayor Stephen Goldsmith, an apostle of such competition during his tenure from 1992 to 2000, privatized some 70 functions, saving his much smaller city an estimated $450 million annually. Moreover, Goldsmith won union workers' support for certain of these efforts by promising to share savings with them if they won the competitive bid—demonstrating that there are creative ways to overcome political opposition to change. *Reinventing Government* coauthor (and self-described liberal) David Osborne describes managed competition in his latest book, *The Price of Government*, as "the single fastest route to savings without eliminating services."

Instead of pursuing such a strategy, Bloomberg, bizarrely, has become a force for "repatriation" of assets from the private sector, arguing, for instance, to have the city take over bus lines franchised to private operators on a noncompetitive basis—a move that flies in the face of what cities around the world are doing. A Manhattan Institute study by E. J. McMahon and E. S. Savas estimated that cities are saving between 25 and 50 percent annually on their bus transportation costs by employing true competitive bidding of routes. If New York genuinely privatized these bus franchises instead of "repatriating" them, it could save several hundred million dollars a year in subsidies. Greater privatization, moreover, by migrating workers to the private sector, would also help the MTA curb its growing pension and health benefits costs, since politically motivated legislation in Albany would no longer dictate them. Furthermore, the presence of an alternative efficient and low-cost transportation system would serve as a constraint on the transit union's often extravagant demands, and would dissuade it from going on strike.

"The mayor seems to have little faith in the free market, as was clear from his pursuit of a subsidized Manhattan stadium."

Bloomberg has also clung to assets that the city has no business owning, at great cost to taxpayers. He canceled a Giuliani-brokered $160 million deal to sell three publicly owned office buildings that house United Nations agencies (and that pay no property taxes), for the absurd reason that the scandal-scarred outfit was not comfortable with "private landlords." He similarly scrapped a Giuliani effort to sell Off-Track Betting for $250 million, believing that he could instead hire an executive to turn the bookie operation around, but OTB's annual contributions to city revenues have dropped precipitously from $12 million three years ago to essentially nothing. Now, the city faces the prospect of subsidizing OTB as it goes into the red. Assets that are better managed by private companies should go back on the auction block.

Gotham's revenues consistently run short of spending, despite high tax rates, partly because New York provides more services and supports more duplicative governmental departments, commissions, offices, and boards than perhaps any other city. In California, Governor Arnold Schwarzenegger has created the California Performance Review to examine all facets of state government and recommend elimination or consolidation of redundancies. Mayor Bloomberg should follow suit, with an eye toward changes in New York's charter that would downsize government. Among the candidates for elimination are the useless borough presidents' offices (annual cost: $30 million); the Human Rights Commission, which duplicates federal and state efforts and costs some $10 million a year; and the Board of Correction, replicating state oversight functions for nearly $1 million.

Stimulating the economy. Mayor Bloomberg has frequently complained that repayment of the city's high accumulated debt is squeezing his budget. But the mayor, who lumps these debt payments among the "uncontrollables" of his budget, has himself been piling on billions in debt and, worse, using it to fund wasteful subsidized housing and giveaways to developers. He would do far better to unleash the private sector to do unsubsidized development, including building affordable housing, instead of spending taxpayers' money in ways that studies show rarely work but only add to the city's debt burden. Strangely, though, the mayor seems to have little faith in the free market, as was clear from his dogged pursuit of a subsidized Manhattan stadium project, even to the point of crowding out private developers. Nothing better sums up the administration's antimarket mentality than a comment that Deputy Mayor Dan Doctoroff made during the fall about the city's desire to remove developer Larry Silverstein from the World Trade Center rebuilding: "There is an inherent conflict between someone who is market-driven and the city's interests, which should be rationally discussed."

Instead of trying to micromanage the city's economy, Mayor Bloomberg should attack the true problems that have kept Gotham stuck in a 50-year boom-and-bust cycle, so that today the city has fewer jobs than it had 35 years ago. He should focus his talent on reducing the sky-high tax rates and the bureaucratic regulations that burden companies, make development expensive and difficult, and discourage entrepreneurs from locating here.

A good start would be to speed up the rezoning of the city's abandoned manufacturing space for commercial and residential development, which will create not only temporary construction jobs but also permanent jobs, because the population growth that new housing spurs is a powerful economic engine, as new residents demand more goods and services. After years of manufacturing decline, the city is dotted with unused land awaiting redevelopment. A recent Manhattan Institute study identified five former industrial areas, one in each borough, that are ripe for rezoning and redevelopment and that together would add over $1 billion a year to the city's property-tax rolls.

To speed such redevelopment, Bloomberg should hack away at the regulations, taxes, fees, and other costs that make building in all of New York's boroughs more expensive than in any other city. Despite the opposition of the union-friendly City Council, he should keep trying to revise the city's obsolete and costly building code, which discourages outside builders from entering the city. He should also push back against the Council's refusal to lift the zoning barriers to big-box stores. New York's outer boroughs, with disposable income comparable with that of the Nassau County suburbs, have thousands fewer retail jobs and collect tens of millions less in sales-tax dollars annually, because the Wal-Marts and wholesale-club stores where New Yorkers want to shop are in the suburbs, not the city.

Of course, what the city's economy needs most are tax cuts. The premium that businesses pay to be in New York has hollowed out the city's economy, as companies have moved mid-level jobs out of town, leaving behind only high-end jobs and the low-wage positions necessary to support them. The combined city and state corporate tax rate, nearly 18 percent, is almost double New Jersey's levy and two and a half times Connecticut's. The city's property tax adds, on average, nearly $13 a square foot to office leases in Manhattan, while the same tax in Los Angeles amounts to just $2.16 a square foot, in downtown San Francisco just $3.15 a square foot, and in New Jersey only $2.75 a square foot. Residents get soaked, too, by high income and sales taxes, especially on the middle class and the wealthy. The combined state and local tax burden in New York City is nearly 60 percent higher than the national average for a family of four earning $75,000 a year, and about 70 percent higher for a family earning $150,000 or more.

Facing a $2.3 billion deficit in his first budget in 1994, Giuliani boldly proposed a plan to make the city more competitive by cutting its hotel tax, gradually ending the commercial rent tax outside Manhattan, and eliminating the sales tax on clothing items under $110. Though editorialists and fiscal watchdogs prophesied doom, Giuliani persevered throughout his eight years as mayor—during which New York added 440,000 new jobs as a result, and employment grew faster than the national rate for several years.

Bloomberg has taken the opposite course, imposing a cigarette-tax boost, a record 18 percent property-tax hike, and sales- and income-tax increases, which, all told, have sucked over $6 billion out of the city's economy and into government coffers. Higher fines and fees, as well as aggressive upward reassessment of properties, have netted the city billions more and produced such ire in the business community that the head of a small-business coalition condemns the administration's approach as a "scorched earth

LOUIS LANZANO/AP WIDE WORLD PHOTOS

With no taste for confrontation, Mayor Bloomberg never faced down the unions, including the UFT, headed by Randi Weingarten (above).

policy" (see "Gotham Stalls Out," Spring 2005). Moreover, during his reelection campaign, Bloomberg wouldn't rule out future tax hikes—unlike even former mayor David Dinkins, who called a halt to tax increases after he socked New Yorkers in the early 1990s with a round of big raises that didn't solve the city's budget crisis, because Dinkins, like Bloomberg, didn't cut spending.

There is no shortage of crippling taxes that a New York reformer would want to combat, from the commercial occupancy tax—the country's only tax on rent—to the city's personal income tax, which most major cities, including Los Angeles and Chicago, don't even have. The city's levy is a big reason why New York has the highest rate of residents who leave to live somewhere else of any city in the country. Worse, since the city's high income tax falls heavily on unincorporated small businesses, whose owners pay taxes on their profits through the personal income tax, many of them locate just outside the city limits to avoid the tax.

Even with deficits looming, such tax cuts would pay for themselves by generating new economic activity, as Giuliani confidently—and accurately—predicted when he proposed his cuts in the midst of deficits. A reduced hotel tax produced more total revenues because tourism increased, while the abolition of the clothing sales tax yielded a 4 percent increase in overall sales-tax collections, because people stayed in the city to shop instead of trekking to Jersey.

In his first term, Mayor Bloomberg made Gotham's fundamentals worse, not better, and he displayed an almost finicky distaste for confrontation, a squeamish reluctance to make tough decisions and wield the political power necessary to impose them. Will the endorsement that voters have given him stiffen his resolve? New York's future depends upon it.

Research for this article was supported by the Brunie Fund for New York Journalism.

City's Pupils Get More Hype than Hope

Test scores show little payoff for mayoral control.

Sol Stern

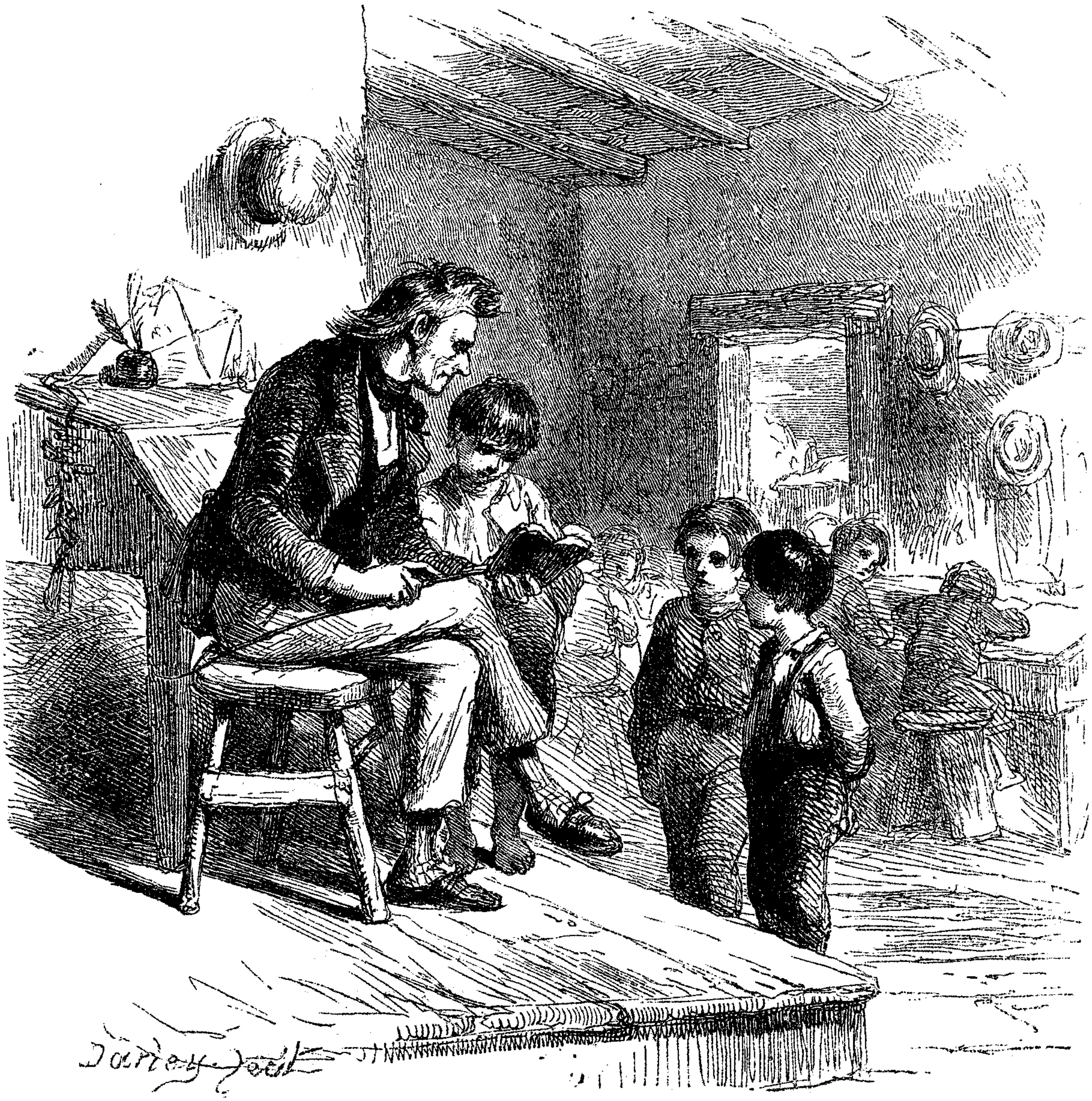
Judge me by the results," Mayor Michael Bloomberg announced in May 2002 as the state legislature gave him absolute control of New York City's schools. Everyone who cared about improving education in the city, it seemed, was smiling. After all, under the old Board of Education, with its seven voting members appointed by six different elected officials, it was impossible to hold anyone fully responsible for the city's dysfunctional school system and its dismal student outcomes. Our new billionaire mayor not only welcomed being accountable for the schools; he also made it clear that he intended to invest political capital in the risky business of education reform.

Unfortunately, it's now evident that what Mike Bloomberg really meant when he said that we should judge him by "the results" was nothing more than one vote, one time. If New Yorkers believed that the schools had made insufficient progress by the 2005 mayoral election (Bloomberg's last, because of term limits), they could vote to fire him and pick a new education CEO. That's a pretty constricted interpretation of education accountability under mayoral control: no one can plausibly argue that last year's desultory mayoral election was a fair referendum on Bloomberg's education record. With hapless Freddy Ferrer leading the opposition, New York didn't come close to having a serious debate on the schools. When asked how people who didn't like his education policies might express their concerns after Election Day, Mayor Bloomberg quipped: "They can boo me at parades."

If more New Yorkers knew how the schools were really doing, there'd be a lot of boos.

The mayor has made it harder for the public to know, however. A major rationale behind mayoral control of the schools was that a mayor's political future would be endangered if voters felt that he presided over continued education failure, thus motivating him (in theory) to press harder for school improvement. But in a classic case of unintended consequences, mayoral control has given this particular mayor the means to shape the education debate on his own terms—to deflect criticism, dominate the media, and use the schools as campaign props. Admittedly, some such distortion would have occurred anyway, thanks to Bloomberg's unique talent for co-opting potential opposition through his prodigious philanthropy and extensive social and business contacts. But the mayor's co-optation effort also got a giant boost from his taking control of a $16 billion education empire that doles out jobs and no-bid contracts and that spends millions on a well-oiled public-relations machine, while disdaining independent research and evaluation of its new classroom programs.

The administration has used its new powers to cut off the flow of essential information to the media, to education reform groups, and to scholars—the institutions and people that citizens normally count on to help them make informed judgments on school performance. Journalists



THE ART ARCHIVE/CULVER PICTURES (3)

routinely complain of having even less access to the schools than they did under the Board of Education. "It's easier to get information from private schools," said Joe Williams of the *Daily News* to a Columbia Journalism School publication. The *New York Times*'s Elissa Gootman grumbled: "I think the department officials are afraid of what you will see if you go into the schools." *Newsday* education reporter Ellen Yan went so far as to compare the Department of Ed's information control techniques with the KGB's.

Still, the barriers to information that reporters cite cannot adequately explain Bloomberg's free ride on education. Neither the city's editorial boards nor its business organizations nor its universities have shown much interest lately in playing the crucial role of independent education watchdog, as the almost universally complacent response to the mayor's failure to win significant reforms in the teachers' contract shows.

Partly because of this abdication, the mayor could sell most New Yorkers on the falsehood that students were making significant academic progress, thus "proving" that his new education programs worked.

The most egregious case in point: the administration's hyping of fourth-grade reading scores just a few months before the mayoral election. In 2005, the percentage of city fourth-graders who achieved at Level Three or above on the statewide reading exam (defined as "meeting standards" or "demonstrating proficiency") rose ten points, to 59.5 percent. Bloomberg trumpeted this rise as "historic" and "record setting," and most of New York's media accepted his view more or less at face value. Banner headlines such as MINORITY KIDS SOAR IN READING dominated the city's tabloids; editorials congratulated the mayor, crediting him with the achievement. Hardly noted was a disturbing fact: almost 70 percent of the city's eighth-graders remained mired in near illiteracy. The percentage of that cohort of students meeting state reading standards actually *fell* 2.5 points, to a pitiful 32.8 percent.

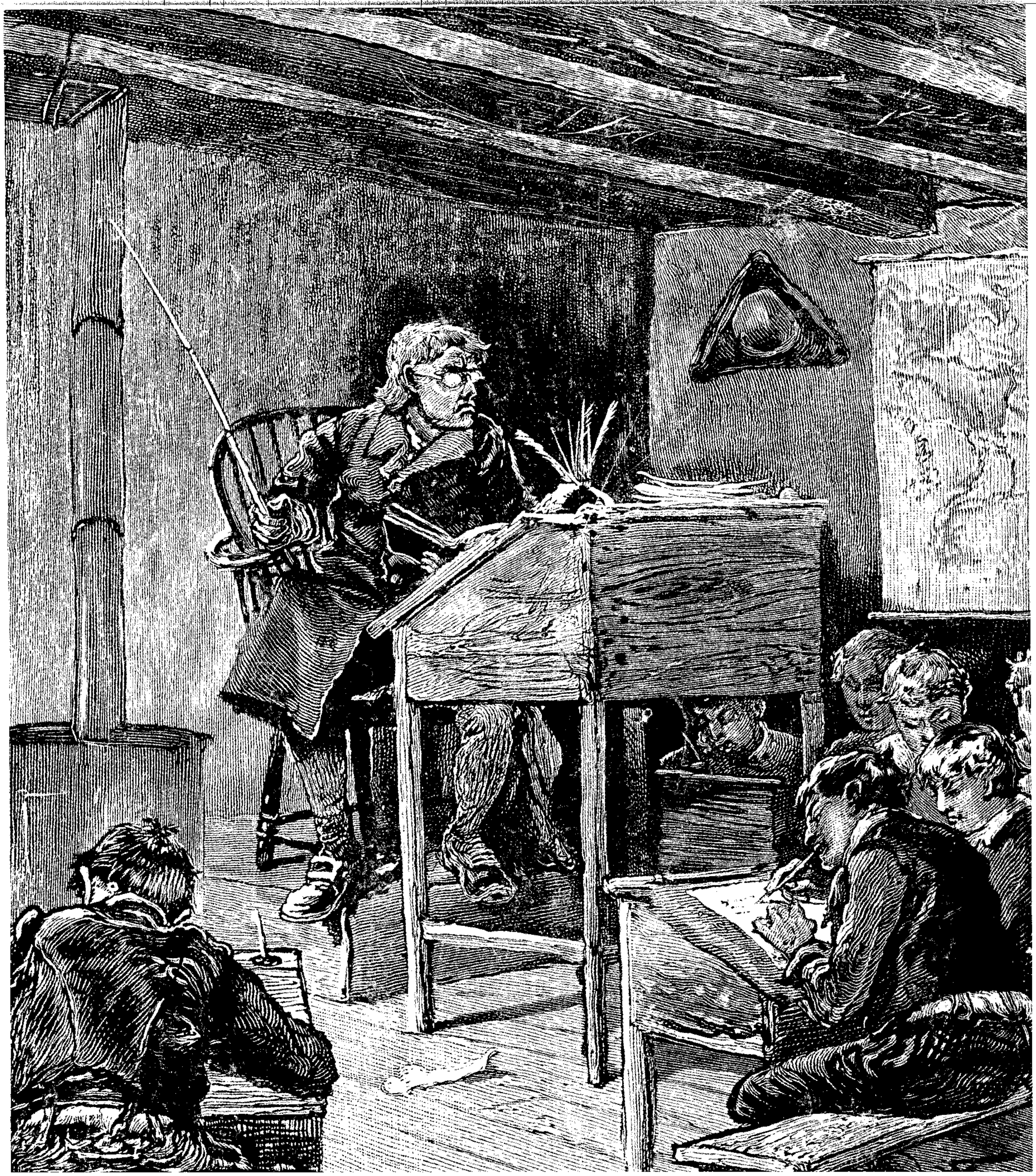
There's no denying, of course, that it would be huge news if the higher fourth-grade test scores meant real gains in reading skills. Fourth-grade reading is probably the most important indicator of future academic progress. A leap forward would also vindicate several of the Bloomberg administration's key early decisions. Shortly after gaining control of the schools, Bloomberg handpicked Joel Klein, a former Clinton Justice Department official with no previous education experience, as schools chancellor. An even bigger gamble was Klein's subsequent decision to hire Diana Lam as deputy chancellor for instruction and then give her carte blanche to revolutionize the city's reading instruction. She promptly banished a phonics program, "Success for All," from dozens of predominantly minority schools where it seemed to be working, and installed a controversial "progressive" alternative called "Balanced Literacy" in almost all the city's elementary schools. This was quite a leap of faith for Klein, since the scientific research on reading in the early grades is abundant and clear: systematic phonics is the best teaching method, particularly for kids from disadvantaged homes. A nepotism scandal eventually forced Lam out, but Klein stubbornly continued to support her pedagogical choices. His pick to succeed her, Carmen Farina, is cut from the same progressive-ed cloth.

Having made these bold decisions, however, Bloomberg and Klein *had* to show significant progress in fourth-grade reading. Otherwise, the administration might come under fire for using schoolchildren as guinea pigs in a failed pedagogical experiment. Klein thus pulled out the stops to boost fourth-grade reading results. The city shelled out hundreds of millions of dollars to retrain teachers in Balanced Literacy. Schools had to devote 150 minutes of every school day (essentially half of available classroom time) to the reading program, and they spent countless hours on test-preparation drills. Klein even hired a "literacy coach" for every school.

Despite this massive effort, the 2004 fourth-grade reading scores actually dropped a few percentage points. Yet Klein and Bloomberg could reasonably argue that a single year wasn't enough time to judge the effect of a new program on a vast school system. Then came the ten-percentage-point upward bump on the 2005 state tests. The stars finally seemed in alignment for Klein. He seized the bully pulpit to proclaim that the fourth-grade gains proved that his new programs were "paying off" for the kids.

But the fourth-grade test scores proved no such thing. For starters, 2005 scores also rose significantly throughout the state. In large urban districts, such as Rochester, Syracuse, and Yonkers, they went up by even higher percentages than in New York City. Since none of these districts used the Balanced Literacy program (or other Klein-favored interventions), there's no logical reason to credit the Bloomberg administration for the Gotham gains. What's more, the fourth-grade scores of the city's Catholic schools also rose about seven percentage points, keeping the same ten-point lead that they've enjoyed over the public schools for years. If the city's new literacy initiatives really were "paying off," wouldn't that achievement gap have narrowed—especially since almost all the Catholic schools use the explicit phonics approach that Klein drove from the public schools?

There's another, unimpeachable source confirming that the Bloomberg administration's claims of spectacular progress on fourth-grade reading are bogus: the National Assessment of Education Progress, or NAEP. The NAEP has served as the federal education department's authoritative and "above politics" testing agency since 1990, with its fourth- and eighth-grade reading and math tests often described as the "nation's report card" and the "gold standard" for assessing student achievement. Every two years, the NAEP tests a representative sample of



students in every state, with an enhanced sample set for about a dozen of the nation's largest urban districts.

In passing the No Child Left Behind act, Congress intended the NAEP to serve as an accountability check on state compliance with the new law's testing requirements. The NAEP tries to ensure that its tests are uniformly rigorous and don't change in difficulty from year to year. Thus, when NAEP tests show a notably lower percentage of students meeting minimum proficiency than do a particular state's tests, the discrepancy should raise suspicions that the state is dumbing down its tests to meet NCLB's performance goals and timetables. The NAEP's urban component provides an additional objective look at whether city students are making sufficient academic progress.

The NAEP administered its 2005 fourth-grade reading tests within weeks of the New York State tests, and the results clearly revealed that New York education officials—city and state—have indulged in unwarranted self-congratulation about student achievement. Where the state assessments showed 70 percent of students statewide as reading-proficient, the NAEP had only 33 percent attaining that level. And compared with the nearly 60 percent of city students reaching proficiency on the state test, only 22 percent of city kids reached the comparable

NAEP level. Also, the NAEP showed no upward movement toward proficiency for New York City students since 2003, the last time it tested them. In other words, not only were the city's fourth-graders reading at a shamefully low level; the Bloomberg/Klein reforms had produced no significant academic improvement.

Confronted with the NAEP results, Klein changed the subject. In a press statement, he boasted that New York City fourth-graders did better in reading than kids in most other urban districts. That's true—but irrelevant. New York City's achievement levels have always been higher (though still lousy) than those of cities like Chicago, Detroit, Los Angeles, and Washington, D.C. The reason: Gotham's schools have suffered less from white middle-class flight than most other old cities, while at the same time benefiting from an influx of striving and stable immigrant families.

Klein also heralded a three-percentage-point increase over two years in the number of kids moving from "Below Basic" (the functional equivalent of illiteracy) to "Basic" (somewhere short of grade level)—not exactly headline-grabbing news. He celebrated a much more impressive-sounding ten-percentage-point shrinking of the reading achievement gap between white and black fourth-graders. It became somewhat less impressive, however, after a closer look showed that half the "improvement" resulted from a still-unexplained five-percentage-point drop for white students (perhaps brought about by abandoning phonics). It said much that the "reform" chancellor who claimed a historic breakthrough in reading before the election was now grasping at straws.

Klein could put a slightly better spin on the poor reading results in part because of the Bush education department's diminished enthusiasm for maintaining the NAEP's watchdog function. Like other pols, the Bushies don't like bad news. Just as some state officials have tried to head off bad news on their inability to meet NCLB standards by dumbing down tests—as certainly seems to have happened in New York—Bush education officials have lately tried to show that NCLB is working by easing some of the NAEP's strict standards. Darvin Winnick, former education secretary Rod Paige's appointee to chair the NAEP governing board and a Texas friend of W.'s, has pushed the NAEP staff to argue publicly that getting children to meet the "Basic" standard—one level below the "Proficiency" benchmark—is a sign of reasonable progress. This move waters down official NAEP guidelines, which clearly state that "the overall achievement goal for students is performance at the Proficient level or higher" and that "the Basic level is not the desired goal."

The news out of Washington wasn't uniformly bad for New York City. NAEP did detect a five-percentage-point gain in the number of fourth-grade students who reached the "desired" Proficiency level in math. But without further statistical analysis, there's no way to attribute the gain to any particular factor. It might be due to new math programs that Klein introduced, but it could just as easily reflect a nationwide trend toward small but steady improvement in math achievement in lower grades. Indeed, several other cities showed greater math improvement than New York City.

With media attention focused on the Bloomberg administration's claims about fourth-grade scores, almost no one has paid attention to student performance data for the school system's upper levels. The administration doubtless prefers it that way.

Not only did Gotham's eighth-graders score abysmally in reading on the state test and the NAEP, but their math results were stagnant—and crummy—on both tests, too. And only 20 percent of city students met the not very high eighth-grade state proficiency standard in social studies (NAEP has no social studies test). That means that four out of five of our students entering high school are blank slates in civics, geography, and history.

Other astonishingly bad student results only came to light thanks to the dogged efforts of Eva Moskowitz, chair of the City Council's Education Committee. Among the revelations produced in a series of post-election hearings that

she chaired: the percentage of city eighth-graders meeting state science standards has plummeted from 54 percent to 45 percent under Bloomberg. At one hearing, Moskowitz badgered the top science official in Klein's education department until the official conceded that the quality of science education in the city was "horrendous" and that the department didn't even know how many certified science teachers worked in the schools.

A later hearing uncovered that the percentage of students graduating with a Regents diploma—requiring one to pass exit exams in at least five subject areas—has shrunk from 35 percent to an even more dismal 33 percent during the Bloomberg term. Fewer than one in ten black and Hispanic students earned Regents degrees.

For those who want to look, the picture of student achievement during the first Bloomberg term is coming into clearer focus—and it's not pretty. Aside from fourth-grade math, stagnation or decline has marked every important benchmark test from the early grades to high school exit exams. If not for the expectations that mayoral control raised, one might merely note that the present administration's results are no worse than those obtained under Harold Levy, Klein's immediate predecessor, during the bad old Board of Ed days.

But the prospects for real education reform suffer terrible damage when a taxpayer-funded public-relations juggernaut gets away with spinning poor test outcomes as "historic" in order to improve a mayor's electoral prospects. It's not good for the city—and it's especially not good for the city's schoolchildren—if the public comes to believe that remedies for school failure are working, when they indisputably aren't. Eventually the public will wake up and realize that it's been getting Soviet-style statistics about a brighter future when the factories still can't produce shoes.

Dare we ask whether mayoral control—at least under *this* mayor—might actually have undermined democratic accountability in the schools and made things worse, not better? ■

Ronald Reagan's Unlikely Heir

WELCO
MRS. B
Bush
from
ST. JOS
The School
Ma

D STATES OF AMERICA
CHOOL

COURTESY OF KEN BLACKWELL (3)

Ohio's Republican gubernatorial front-runner Ken Blackwell is "Jesse Jackson's worst nightmare."

Steven Malanga

Ken Blackwell has just finished regaling a group of Ohio retailers with his vision of how to turn around the state's struggling economy with a heavy dose of fiscal restraint and tax cuts. The crowd, accustomed to Republicans who tax and spend as furiously as Democrats, is rapt. But as Blackwell works the room afterward, on a warm fall afternoon in Columbus, one well-dressed woman stops him to outline her concerns. "I like your ideas on taxes," she tells the former college football star, who at 6 foot 5 towers over her imposingly, "but I don't like your other ideas so much"—meaning Blackwell's strong pro-life positions and support of a constitutional amendment defining marriage as between a man and a woman. "I am not just an economic being," Blackwell unapologetically replies. "I have a wider set of beliefs that I follow." And then, before the woman moves away, Blackwell adds: "With me, you'll always know what you are getting. You'll always know where I stand."

Right now, Ken Blackwell stands at a pivotal point in American politics. He's taken an early lead in the race for governor of a state that was key to reelecting George W. Bush and that may well be even more crucial in picking the next American president. Moreover, Blackwell has built his early lead not by tacking toward the center of this swing state but by running on an uncompromisingly conservative platform that's

Ohio secretary of state Ken Blackwell, shown here with former first lady Barbara Bush, . . .

won him grassroots support from both Christian groups and taxpayer organizations—a novel coalition that makes the old-boy network in his own Ohio GOP as uneasy as it makes the state's Democrats, who have begun a "stop Blackwell" campaign.

Ken Blackwell has so many people worried because he represents a new political calculus with the power to shake up American politics. For Blackwell is a fiscal and cultural conservative, a true heir of the Reagan revolution, who happens to be *black*, with the proven power to attract votes from across a startlingly wide spectrum of the electorate. Born in the projects of Cincinnati to a meat-packer who preached the work ethic and a nurse who read to him from the Bible every evening, Blackwell has rejected the victimology of many black activists and opted for a different path, championing school choice, opposing abortion, and staunchly advocating low taxes as a road to prosperity. The 57-year-old is equally comfortable preaching that platform to the black urban voters of Cincinnati as to the white German Americans in Ohio's rural counties or to the state's business community.

The former Xavier University football star is one of a handful of black conservatives making a stir in national politics. The group includes Maryland lieutenant governor Michael Steele, vying for an open U.S. Senate seat in his heavily Democratic state; Keith Butler, a minister and former member of the Detroit City Council who is the current front-runner for the GOP nomination for next year's Michigan Senate race; former Pittsburgh Steelers great Lynn Swann, running for the 2006 Pennsylvania GOP gubernatorial nomination; and Randy Daniels, New York's former secretary of state, now seeking the state's GOP gubernatorial nomination. Of this group, only Steele has the unqualified backing of both his own state GOP and the national party. Ironically, Blackwell and Co. are proving too conservative for the Republicans.

Blackwell stands apart from the group, thanks to his deep electoral experience and his very good chance of getting elected. He has already run more political races—from school-board seat to city councilman to secretary of state—than all the rest of them combined. He's served in Washington as a HUD undersecretary and traveled the world as a U.S. ambassador. He's chaired a major presidential campaign, been mayor of one of Ohio's largest cities, and plotted supply-side fiscal policy with Jack Kemp. If he wins in Ohio, a state where Republicans are on the defensive after scandals that rocked the administration of Governor Bob Taft, Blackwell would not only become the nation's first elected black Republican governor but would immediately figure as a compelling 2008 vice-presidential candidate.

"Ken Blackwell represents the only chance the Republicans have in Ohio," says Paul Weyrich, who headed the Heritage Foundation, where Blackwell was an analyst in 1990. Weyrich, who calls Blackwell one of the few extraordinary individuals he has met in 50 years of public service, says that, without him on the ticket, Ohio Republicans "are going down the tubes big-time for what they've done there."

What they've done since capturing the statehouse more than a decade ago is to engage in a flurry of taxing and spending that has left the state's budget swollen and its economy deflated. Under GOP rule, state and local government spending from 1995 through 2004 rose nearly 20 percent faster than the personal income of Ohio's residents—almost three times the national growth rate. To pay for such splurges, current governor Bob Taft, in conjunction with the Republican-dominated state legislature, heaped on some $350 million in tax increases in 2001, then followed with a host of new levies the following year, prompting the Cato Institute's annual survey of governors to deplore his "disastrous fiscal record" and award Taft a failing grade. "About the only good news to report is that Bob Taft is term limited and cannot run for office again," the Cato report declared.

Not surprisingly, Ohio's economy has been one of the nation's feeblest. In the last decade, the state's private sector has added only about 147,000 jobs, a mere 3.4 percent growth rate, compared with a robust 12 percent nationwide.

. . . combines the free-market faith of Margaret Thatcher (right) and Ronald Reagan . . .

Ohio also lays claim to one of the slowest population growth rates of any state, and one of the highest rates of migration of its citizens elsewhere in the country. "We have become one of the leading repopulators of other states," Blackwell says.

Though Ohio's decline has been steepest in the last ten years, the state has been on a downward arc for more than three decades, transformed by both Democratic and Republican administrations from one of the country's lowest-taxed states to its current high-tax, slow-growth model. Ironically, the man now bidding to reverse the state's course has been on exactly the opposite ideological arc. Coming of age in the 1960s, Blackwell tilted toward the radical activism of that era. Sporting an Afro and a dashiki, he headed the African-American student association at Cincinnati's Xavier University, attended Martin Luther King's funeral as the school's representative, and studied the organizing principles and confrontational politics of Saul Alinsky, founder of the far-left Industrial Areas Foundation. A football star with an athletic scholarship, Blackwell took a break from activism after college to try out for the National Football League's Dallas Cowboys, but when the team tried to turn the linebacker into an offensive lineman, Blackwell turned his back on a three-year deal to play pro ball and returned to Xavier for graduate school. He leaped into the political arena, running for the local school board in a race that he narrowly lost in 1977. He took time out to marry his high school sweetheart, Rosa, who after 35 years in the Cincinnati school system rose last year to become its superintendent, successfully leading it off Ohio's list of most troubled school systems by year's end.

Her husband fashioned his first winning coalition in politics when he started to reject the Left's nostrums because they conflicted with his own family-inspired beliefs. By the mid-1970s, he already opposed forced busing as a solution to black educational problems, because he doubted that black kids needed to sit next to white ones to do well. Noticing how white parents took advantage of Cincinnati public schools' open enrollment policy, which allowed talented kids to select schools outside their districts, Blackwell became an early advocate for school choice. Mindful that many families in public housing seemed stuck there, Blackwell began to worry that government programs to help the poor were instead breeding dependence, and he became one of the few black political leaders of the 1970s to preach that the responsibility for rising out of poverty rested with the individual, not the government.

Carrying this message around Cincinnati, Blackwell attracted white liberals ready to embrace an attractive and eloquent black candidate, blacks who identified with his message of social conservatism and personal responsibility, and conservatives who saw him as an unexpected ally. This broad-based support won him a seat on the Cincinnati city council in 1977 as a member of the Charterist Party, a 1920s-style progressive reform organization. The council's only black at the time, Blackwell was elevated to mayor two years later by council members, in a era when they, not voters, elected the city's top official. On Blackwell's first day in office, 11 people died in a mad stampede at a Cincinnati rock concert; the 31-year-old mayor earned instant credibility for his clear-headed response to the crisis and its aftermath.

Blackwell's unusual political profile began attracting attention outside Cincinnati, too. He met then-congressman and former Buffalo Bills quarterback Jack Kemp through the NFL's alumni association—though, he points out, "Kemp played for 13 years, and I played for about 13 minutes." Blackwell traded ideas with the future Housing and Urban Development secretary on using the private sector to spur inner-city redevelopment, and Kemp steered Blackwell to others who helped refine his thinking, including Reagan White House staffers. While he debated whether to leave the Charterist Party to become either a Democrat or a Republican, Blackwell got an invitation to visit Reagan in the White House, where the president told Blackwell the story of his own political conversion. "I walked out of there knowing that I was going to join the party myself. It was clear to me that I stood a better chance of following my principles as a Republican," says Blackwell.

One of Blackwell's principles, handed down from his father, is that opportunity is something you have to grab for yourself, because it won't be handed to you by government or anyone else. Since becoming a Republican, Blackwell has sharpened that principle into a coherent set of ideas on how to spur economic development and create opportunity in the private sector through cutting taxes and regulation. One lesson that Blackwell particularly remembers his father preaching is the importance of owning one's own home—something that the elder Blackwell never achieved. Serving as Kemp's undersecretary at HUD, Blackwell touted recommendations to spur affordable housing development in cities not through government subsidies but by eliminating regulatory barriers to building, streamlining zoning codes, and changing federal grant programs to encourage states and cities to reduce their own land-use bureaucracies.

> **"One of Blackwell's principles is that opportunity is something you have to grab for yourself."**

Serving on the National Commission on Economic Growth and Tax Reform in the mid-1990s, Blackwell became a passionate advocate of a simplified tax code and co-edited a book with Kemp, entitled *IRS v. The People: Time for Real Tax Reform.* So much significance did Blackwell eventually come to attach to tax reform that he agreed to chair Steve Forbes's 2000 Republican presidential primary campaign, centering on Forbes's flat-tax proposal. "Ken is an experienced fighter in the political trenches, but he also thoroughly understands the ideas he's fighting for," says Forbes. "That's a very rare combination in politics."

As Blackwell rose in the national Republican Party, he won greater attention from the Ohio GOP, though the state party quickly discovered how much Blackwell's Reagan Republicanism diverged from its unreformed country-club Republicanism. In 1993, Governor George Voinovich appointed Blackwell to fill Ohio's vacant treasurer's post, and the next year voters elected Blackwell to that position, making him the first black to win statewide office in Ohio. Four years later, he was elected secretary of state—after forgoing a run for governor at the request of Ohio's Republican Party chairman, who wished to spare Taft a primary battle.

In the midst of his rise, Blackwell has struggled to push the Ohio GOP rightward, becoming one of its sternest critics. He bitterly opposed Governor Voinovich's attempts to raise the state sales tax, then successfully campaigned against a ballot initiative designed to increase the sales tax after Voinovich's effort failed in the legislature. Though many state GOP leaders supported the tax-hike initiative, 80 percent of Ohio voters rejected it. (Voinovich, now one of the U.S. Senate's so-called Republicans In Name Only, is today's leading national embodiment of Ohio-style Republicanism.) Blackwell's successful opposition to his own party sparked an all-out war on him, with Republican House Speaker Larry Householder's staff even circulating a 109-page plan for destroying Blackwell politically. The hyperbolic language of the report labeled Blackwell "the Enron of Ohio politics, propped up and overvalued, a fraud," prompting Blackwell to respond that the report displayed so much hate on the part of its authors that "I pray for them and for us."

In a state where he's often at war with his own party as well as the Democrats, Blackwell has developed a combative political style, sharpened by his quick wit. Drawing a clear distinction between his platform and that of one of his GOP opponents in the Ohio gubernatorial sweepstakes, Attorney General Jim Petro, Blackwell says, "Jim is the Al Gore of Ohio. He wants to reinvent government. I want to shrink it." Responding to GOP criticism that he's too conservative to win in a "50-50 state," Blackwell argues that "voters don't want 50-50 leadership."

In the face of opposition from within both of Ohio's major parties, Blackwell, a National Taxpayers Union board member, is running a singular effort to energize Ohio's taxpayers for the 2006 elections by stoking their anger over the state's tax-and-spend ways. He has collected enough signatures to put an initiative on the 2006 ballot to limit Ohio's spending growth to inflation plus population increase. After a decade in which Ohio's state spending increased by 71 percent, one of the fastest growth rates among the states and some two and a half times faster than inflation plus population growth, a poll last year found strong voter sentiment for fiscal restraint. Nearly eight out of ten Ohioans polled said that they favored constitutional spending limits, while 86 percent said that the state should solve its budget shortfalls with spending cuts, not tax hikes. Blackwell calls his constitutional amendment to limit spending "a reasonable diet for an obese government; we're not proposing something as radical as stomach staples, just a low-carb menu." Still, much of the state's GOP leadership opposes the amendment, as does the Democratic Party and the state's public-sector unions and social-services providers.

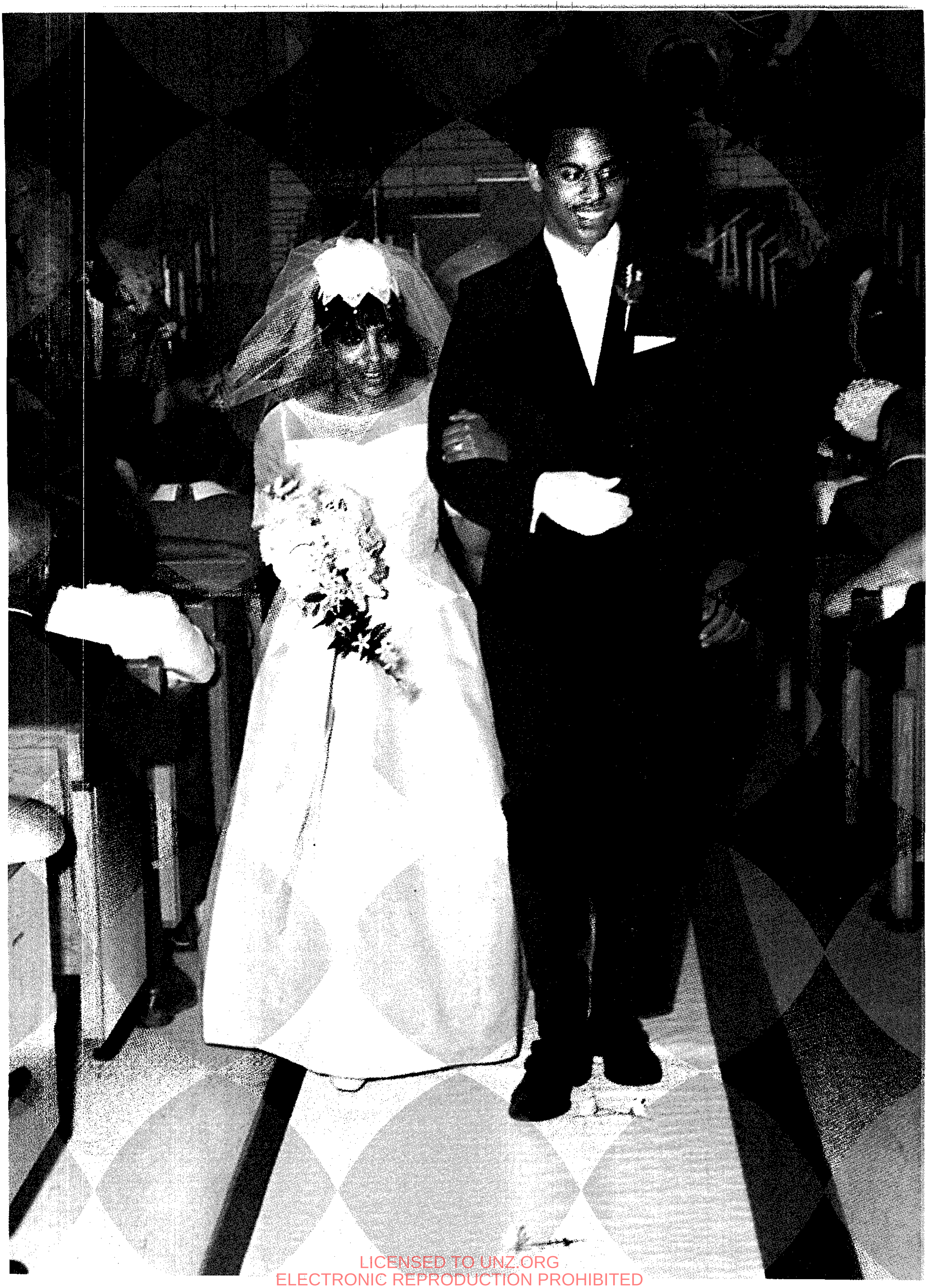
Blackwell would use the breathing room that a slower-growing budget would provide to cut Ohio's tax rates to ignite economic revival. Blackwell begins his standard stump speech before business and taxpayer groups by arguing that both capital and residents flow to low-tax states: Ohio, he points out, is now challenging high-tax states like New York and New Jersey for the lead in driving away citizens. "For 229 years, Americans have protected their own interests and lowered their taxes by moving across state lines," Blackwell says. "In every 24-hour period, on average, 250 Ohio residents move to Florida alone." To combat this drain, Blackwell is proposing a single-rate, flat income and corporate tax rate, a rollback of the 2003 sales-tax increase, and the elimination of Ohio's estate tax.

To counter claims that spending limits and tax cuts would starve essential services, Blackwell is also proposing a host of government efficiencies. He likes to point out that when he served on a committee at his alma mater, charged with making Xavier's operations more cost-effective, one recommendation was that the school contract out its food-service operations, then being run by the Jesuits. "We pointed out to the Fathers that they were good at prayer and teaching but not food service, an idea that was not popular with them at the time," Blackwell says.

He promises to make the same kind of tough decisions about Ohio public spending, and the cornerstone of his agenda is a constitutional amendment that he is trying to get on the ballot to require public school systems to direct at least 65 cents of every education dollar into the classroom, instead of the 57 percent that now gets there—the fourth-worst performance among states. Blackwell has teamed up with Patrick Byrne, CEO of Overstock.com and founder of First Class Education, to promote the so-called 65-cent solution, which would funnel an additional $1.2 billion into the state's classrooms.

Despite this broad fiscal agenda, Blackwell says that his candidacy is about more than taxes and spending. His early lead in the 2006 gubernatorial race is as much a product of support for his cultural agenda from the state's increasingly active religious organizations, an agenda that places him even further out of step with the Ohio GOP than his fiscal agenda. He strongly supported a 2004 ballot initiative defining marriage as between a man and a woman, vigorously opposed by most key state Republican figures and by some business groups, who clearly misread voter sentiment. The initiative, pundits say, sparked record turnout in the 2004 election, drawing out Christian voters and other cultural conservatives, who helped give President Bush a 119,000-vote margin in a state

. . . with a strong commitment to traditional values, faith, and family. Right: his 1968 wedding



where the race seemed much tighter. The amendment had far broader appeal than the president did: it attracted half a million more votes in Ohio than Bush and won with a 62 to 38 percent margin.

Since then, leaders of several largely white Christian groups have lined up behind Blackwell's bid, including the head of the Ohio Restoration Project, Pastor Russell Johnson. The project aims to recruit some 2,000 pastors statewide and register some 500,000 new voters for 2006. Johnson hopes that by vigorously supporting Blackwell, he will help tilt the Ohio GOP rightward. "The Ohio Republican Party is out of step with its base," he says, pointing to the lopsided 2004 vote in favor of the marriage amendment, which 73 percent of GOP voters supported. "Ken Blackwell is closer to the values of the rank and file than those who now run the party."

It hasn't hurt Blackwell's reputation with the rank and file that his deep religious convictions have drawn fire from noted liberal interest groups, winning him some extraordinary publicity. Several years ago, he opened a meeting with state employees by asking them to pause for a moment of prayer and reflection, prompting a complaint from the American Civil Liberties Union. What particularly irked the ACLU was that Blackwell actually seemed to be in earnest: he didn't "want them to just go through the motions of praying," the ACLU complained, "but wanted it to be a sincere and thoughtful prayer." After the well-publicized episode, Blackwell asked state employees in his next meeting to sing "God Bless America" before getting down to business.

Such incidents play well with Blackwell's typical voter—a "German-American farmer from rural Ohio," he says. The truly intriguing question, however, is: Can Ken Blackwell, running for governor on the same kind of platform, also attract African-American voters? If so, he will assemble a powerful and unusual coalition of middle-class taxpayers, Christian conservatives, and minority voters. Blackwell is fond of pointing out (as others have) that there is considerable overlap among these groups, especially since many blacks have entered the middle class and are socially conservative; indeed, polls show that African-American voters backed the Ohio marriage amendment in about the same proportions as other voters. When he speaks to black groups, Blackwell emphasizes his cultural positions as well as the common stake that all citizens have in the country's economic success, something that today's crop of civil rights activists rarely acknowledge. Speaking before an Ohio NAACP chapter several years ago, Blackwell quoted Booker T. Washington on the shared destiny of blacks and whites: "We are one in this country. We rise as you rise. We fall when you fall. . . . There is no power that can separate our destiny."

Blackwell is betting that many black Americans may be ready for a candidate, like him, who doesn't preach victimology and doesn't see the world almost entirely in racial terms. Blackwell is a post-racial, post-civil rights campaigner; race rarely enters into his speeches and is barely a part of his political platform. And even when Blackwell does address racial issues—the achievement gap between black and white students, for instance—it's to tout free-market solutions like vouchers and charter schools. So far, this approach has resonated with black voters, attracting 40 to 50 percent of them in his statewide elections, even though he runs on the GOP line. And his strong support of Bush in 2004, analysts say, helped the president double his black vote in Ohio over the 2000 election. Bush won 17 percent of African-American votes in Ohio in 2004, compared with 11 percent nationally.

With that kind of track record, Blackwell has become a growing target of left-wing blacks like Jesse Jackson, aghast that the first black governor of a major midwestern state might actually turn out to be a conservative who doesn't trade on race. Though Blackwell has yet to suffer the kind of indignities of Maryland's Steele—pelted with Oreo cookies in his campaign appearances—black Democrats have dismissed him as an opportunist for joining the GOP and accused him of trying to "disenfranchise" blacks to help elect George Bush president. In the midst of the campaign, one Ohio Democrat compared Blackwell to a "children's

Transformer toy," because he wore an Afro in college and today is a conservative. Jackson showed up in the state just before the 2004 vote and denounced "beneficiaries of our work engaging in election schemes to undermine the right to vote," a reference to Blackwell's role as the state's chief election officer. Mindful that many people found it hard to swallow the notion that a black was disenfranchising other blacks, Blackwell shot back, "I am Jesse Jackson's worst nightmare."

"Blackwell is a post-racial, post-civil rights campaigner; race rarely enters into his speeches."

Blackwell's opponents hoped that the 2004 elections would undo him, but instead his assured performance as the state's top election official buoyed his prospects. Prognosticators warned that Ohio would be "the new Florida" in 2004—a state where a close tally and voting problems would throw the presidential race into doubt and then into court. Indeed, after the election, as the *Cleveland Plain Dealer* reported, everyone from high school students to professors, civil rights lawyers, party activists, and journalists descended on the state to pore over election records, many of them "looking for a smoking gun," in the newspaper's words. But although the state had an unusually high 70 percent turnout, and though long lines prompted Blackwell to order some polling places to stay open well after the announced closing time, recounts showed that the vast majority of ballots were counted correctly, and only the most extreme conspiracy theorists tried to press the case that Republicans had somehow stolen the race. Ohio voters in particular seem unimpressed by such claims. A host of national left-leaning groups poured money into the state's 2005 elections backing ballot proposals to diffuse some of the power of Blackwell's office and to change state election procedures, ostensibly to "cure" some of the problems from 2004. But Ohio voters overwhelmingly rejected the proposals, against which Blackwell had campaigned vigorously.

Heading into the 2006 elections, Blackwell is clearly on a roll. But as the election draws closer, he will have to deal with increasingly insistent accusations from within his own party that he is too conservative for Ohio, while Democrats, public-employee unions, and social-services advocacy groups try to paint him as an extremist. Indeed, already signs of how the campaign will play out are visible in the state's mainstream press, which celebrated Blackwell's early successes as an up-and-coming black politician but now increasingly dismisses him as outside the political mainstream. The *Cleveland Plain Dealer* praised his appointment as treasurer as a "stroke of genius" in 1994 and said that Governor Voinovich "could scarcely have found a better candidate," but a *Plain Dealer* columnist recently sneered that Blackwell's supporters are "far-right religious zealots and anti-tax fanatics," while the *Akron Beacon Press* has branded his ideas "reckless" and said they would destroy the state. The local press's favorite mantra is that Blackwell is the "darling of right-wing conservative" leaders nationally, as if his campaign represents some plot to hijack the state. "This is what happens to you when you are a politician like Ken, who is more interested in change than in playing along with the old-boy network," says former U.S. House speaker Newt Gingrich, who enlisted Blackwell to serve on one of his advisory groups in the mid-1990s. "Ken Blackwell is a guy who pursues big ideas."

Blackwell's biggest idea to date is to attempt finally to bring the Reagan revolution to Ohio, opposing not only the Democratic Party but also much of the power structure within his own state party. If he succeeds by building the kind of broad political coalition that has worked for him in the past, Blackwell may not only transform Ohio but also point the way forward for Republicans nationwide.

This Is the Legal Mainstream?

Law school
clinics are stuck
in the sixties.

Heather Mac Donald

To understand how politically one-sided law schools are, look no further than the law school "clinic." These campus law firms, faculty-supervised and student-staffed, have been engaging in left-wing litigation and political advocacy for 30 years. Though law schools claim that the clinics teach students the nuts and bolts of law practice, while providing crucial legal representation to poor people, in fact they routinely neither inculcate lawyering skills nor serve the poor. They do, however, offer the legal professoriate a way to engage in political activism—almost never of a conservative cast. If you wonder why law school profs invariably deem conservative jurists "out of the mainstream," a survey of the clinical universe makes clear what the academy's legal "mainstream" really means.

In the last few years alone, law school clinics have put the Berkeley, California, school system under judicial supervision for disciplining black and Hispanic students disproportionately to their population (yes, that's Berkeley, the most racially sensitive spot on earth); sued the New York Police Department for its conduct during the 2004 Republican National Convention; fought "gentrification" (read: economic revitalization) in "neighborhoods of color" in Boston, New Haven, and New York; sued the Bush administration for virtually every aspect of its conduct of the war on terror; and lobbied for more restrictive "tobacco control" laws.

Over their history, clinics can claim credit for making New Jersey pay for abortions for the poor; blocking job-providing industrial facilities; setting up needle exchanges for drug addicts in residential neighborhoods; forcing Princeton's eating clubs to admit women; allowing female murderers to beat the rap by claiming "battered women's syndrome"; and preventing New Jersey libraries from ejecting foul-smelling vagrants who are disturbing library users.

Yet only a handful of law schools would have any interest in providing legal assistance to Shawna Spencer, an inner-city Chicagoan who hopes to turn her passion for shoes into a booming business. Already overextended on every possible credit line, Spencer couldn't afford an attorney to negotiate a lease for the shoe store she wanted to open. Fortunately, the University of Chicago Law School offers one of the few clinics to take struggling for-profit entrepreneurs as clients. "I couldn't have opened without my 'attorneys,'" Spencer says of the Chicago law students.

Had this energetic optimist been seeking government benefits or, better yet, had she struck a clinic director as a vehicle for litigating a new entitlement into existence, she could have had the pick of the law school elite to fight her case.

The history of the law school clinic explains why. A handful of clinics existed throughout the twentieth century, to give students hands-on experience of law practice. Drafting complaints

CARICATURES BY H. DAUMIER/BETTMANN/CORBIS

and cross-examining witnesses can usefully supplement the traditional curriculum's emphasis on abstract legal doctrines. Having a real client, who usually presents himself as a muddle of contradictory desires, allegations, and denials, rather than as a neatly packaged cause of action, focuses the mind on how to use the law as a casebook rarely can. And the philanthropic justification for the early law school clinics—that they provided legal help to people who otherwise couldn't afford it—is unimpeachable.

But once the Ford Foundation started disbursing $12 million in 1968 to persuade law schools to make clinics part of their curriculum, the enterprise turned into a political battering ram. Clinics were the perfect embodiment of a radical new conception of lawyers and litigation that emerged in the 1960s—the lawyer as social-change agent. Up until that era, the entire law profession was seen as a form of public service, essential to a democracy. But now, as Attorney General Robert Kennedy urged in 1964, lawyers should fight "the problems of poverty, racial discrimination, and other great social ills." Henceforth, the noble, public-spirited attorneys would be those suing for the egalitarian transformation of society. Arthur Kinoy, the founder of clinical education at Rutgers, called for a new breed of lawyer: "people's lawyers—characterized by their compassion, competence and commitment to the cause of equal justice and positive social change." Note the implication: a solo practitioner who has spent his career helping the elderly draft wills or negotiating commercial leases for small-businessmen is not a "people's lawyer," nor are his clients "people." Ivy-educated activists like the late Harvard law professor Gary Bellow, however, lawyer for the Black Panthers and the intellectual patriarch of the clinical movement, are "people's lawyers."

Ford Foundation head McGeorge Bundy embraced this view and set the agenda for America's richest foundations when he declared in 1966 that law "must be an active, not a passive force. It is both urgent and right that the law should be affirmatively and imaginatively used against all forms of injustice." The foundation made sure that the tax code reflected this new hierarchy of virtue. Soon after launching the clinical revolution, Ford started agitating to make litigation a deductible charitable activity, *if* the litigation was in the "public interest"—a change that would help Ford spread activist lawyering throughout the country via federally subsidized "legal services" offices. After initially rejecting the demand, the IRS gave in.

No one can object to fighting discrimination and poverty. But the problem is that no one elected a Ford-funded "poverty lawyer" to create a new entitlement scheme. If that lawyer can find a judge who shares his passion for welfare, however, the two of them will put into law a significant new distribution of rights and resources that no voter or legislator ever approved.

And what if the activist philosophy of lawyering is wrong in its diagnosis of society's ills? Too bad: correcting its errors through the democratic process is extremely difficult. Sixties-era lawyering belonged to a larger revolution in thinking about the poor, and especially the minority poor. Gone was any reference to personal responsibility: to remark, for example, that dropping out of school, taking drugs, and having illegitimate children produce poverty was condemned as "blaming the victim." Eradicating poverty required massive changes in society, not in individual behavior. The activist lawyer would spearhead those changes by creating new court-enforceable rights and entitlements.

Unquestionably, racial discrimination, and the poverty that it fostered, were urgent problems when Robert Kennedy, McGeorge Bundy, and others issued their call for activist lawyering. But they all underestimated both America's ability to change and an individual's ability to better himself despite prejudice. Today, not only does virtually no major American institution discriminate against racial minorities; all fiercely compete with one another to admit or hire as many minorities as possible, using preferences and double standards to do so.

Yet law schools and their clinics hold firmly to the belief that discrimination remains a major factor holding back minorities. Columbia Law School's statement in support of clinical education is typical—and typically antique: clinics address the "legal problems that arise from poverty, racism, inequality, and political tyranny." And in language that would have seemed cutting-edge 40 years ago, Stephen Wizner, Yale's William O. Douglas Clinical Professor of Law, declares: "Representing groups in class actions, engaging in law reform litigation and supporting community organizing efforts are crucial to increasing the economic and political power of the poor." In other words, what lawyers can do for the poor is equally if not more important than what the poor can do for themselves.

Today's clinical landscape is a perfect place to evaluate what happens when lawyers decide that they are chosen to save society. "Some of us felt like kids in a candy shop: a public interest law firm funded by a law school with ready workers providing important client services," recall Yale's Wizner and Jane Aiken, a Washington University clinical professor of law. The law school clinics don't just take clients with obvious legal issues, such as criminal defendants or tenants facing an order of eviction. They take social problems—unruly students in school, for example—and turn them into legal ones. Florence Roisman, a housing rights activist at the Indiana University School of Law, has inspired clinicians nationwide with her supremely self-confident call to arms: "If it offends your sense of justice, there's a cause of action."

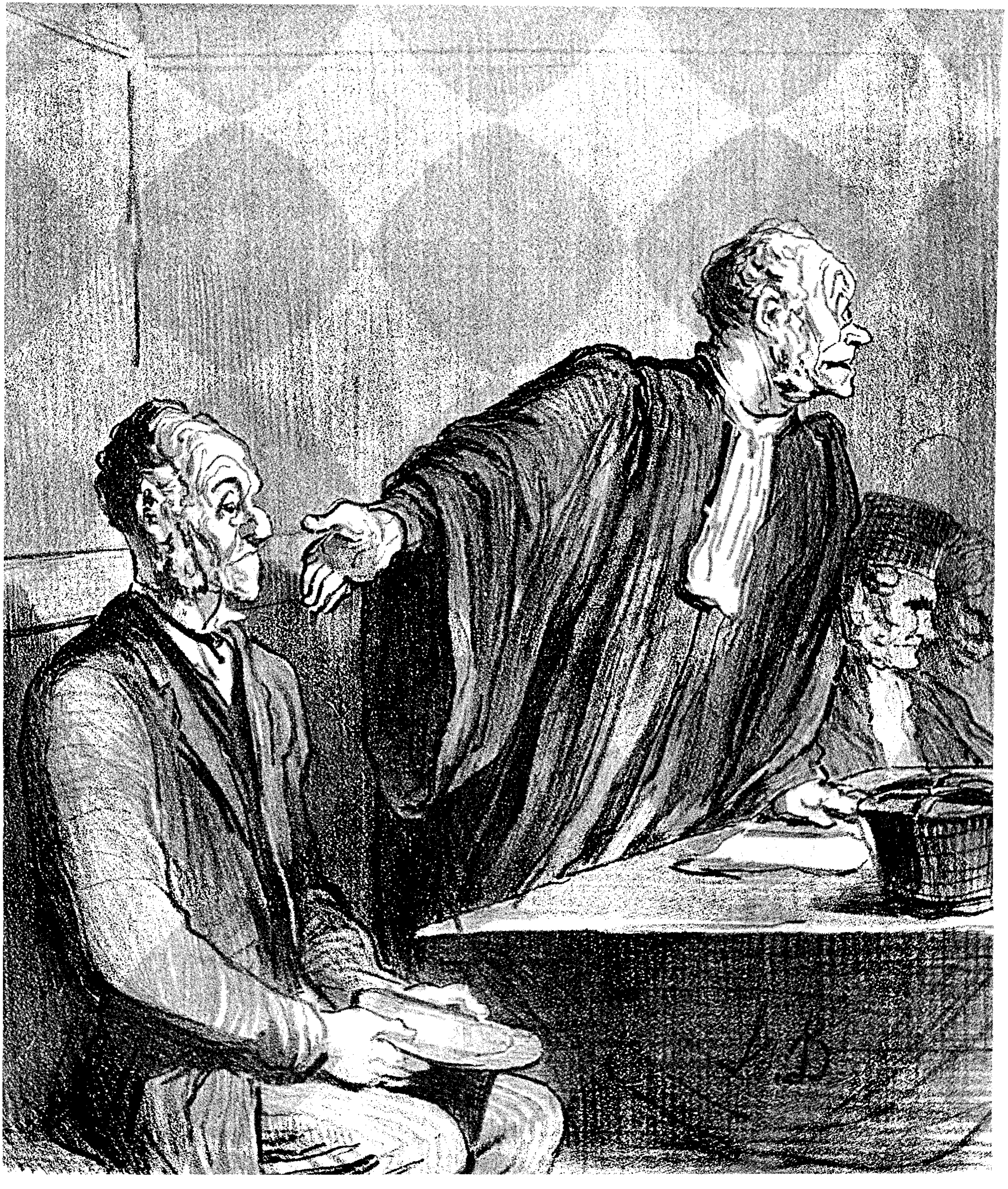
Of course, the original rationale for many clinics disappears under all this social justice lawyering, even though schools continue to invoke it. Harvard, for instance, still explains why law students should enroll in a clinic by emphasizing craft training: "Practical learning . . . should not be deferred until after law school graduation," the faculty declare. But what "skills of legal representation," in the faculty's words, will students in the Gender Violence, Law and Social Justice clinic pick up in researching "gay, lesbian, bisexual, and transgendered awareness" for the Massachusetts trial courts, or in helping with the "development of a new self-defense program" to prevent acquaintance rape? Perhaps providing "legal support," as the clinic description puts it, to V-Day (V is for vagina), a women's advocacy organization, will help students learn how to understand a client's legal needs. But it's just possible that working for V-Day, which organizes worldwide performances of *The Vagina Monologues*, is more about feminism than about law.

"The clinical landscape is a perfect place to see what happens when lawyers decide that they're chosen to save society."

Harvard's Family and Children's Law clinic uses an equally elastic definition of legal training when political advocacy demands it. The clinic has recently discovered a new form of disability that prevents minority children from succeeding in school: the trauma of witnessing domestic violence. Clinic directors hope to persuade Bay State legislators to fund "trauma-sensitive educational approaches." Accordingly, the clinic sponsored a briefing at the state capitol: students manned a phone bank; "prepared informational packets to [*sic*] legislators" (otherwise known as stuffing envelopes); greeted legislators and their staff; and listened to the conference. None of these tasks hones the legal wizardry that future clients of these Harvard-trained lawyers will hope for.

Children's advocacy clinics, a law school staple, typically represent foster children whose real parents have abused or neglected them. Child welfare law is one of the saddest corners of the law, a place where the cold procedural logic of courtroom jousting is superimposed on the chaotic mess of drug-addled lives, irresponsible neglect, and unthinkable abuse. A clinic devoted to adoption or one that sought to establish paternity on the part of unmarried fathers would vindicate interests currently unrepresented in law schools. The director of NYU's Family Defense Clinic, which helps abusive or neglectful mothers keep their children out of, or get them back from, foster care, dismissed these suggestions. "Adoption is largely ministerial"—assembling and filling out the proper forms, explained Martin Guggenheim, the Fiorello LaGuardia Professor of Clinical Law. "A good paralegal can get it down."

Perhaps. But many NYU clinics don't even develop a paralegal's level of expertise. According to the course description, the Community Economic Development Clinic "provides training in how lawyers as problem solvers might work with and in communities to create and sustain a more democratically inclusive, accountable, and effective vision of economic development. Rather than treat this vision as quixotic, the Clinic will explore how—across a wide variety of economic development proposals and across public, private, and civic realms—success may well depend upon the qualities central to such an approach. Through a careful exploration of ideas and impulses about community economic development—how it should be conceived, implemented, and evaluated—the Clinic will illuminate current conditions and future trajectories." Such a description reflects not just the abysmal writing skills of clinic director Gerald Lopez but also the conceptual muddle at the heart of the Community Economic



Development Clinic. The only concrete thing that the students seem to have accomplished is surveying residents and social-services agencies in low-income neighborhoods about their problems.

A paralegal would be overqualified for such a job. No matter. Director Lopez, who frequently invokes his identity as an East L.A. Chicano, boosts a school's highly desirable radicalism quotient, having coined the fashionably edgy term "rebellious lawyering" for whatever it is he purports to do.

NYU's Brennan Center Public Advocacy Clinic explicitly disavows advancing a student's lawyering knowledge; it is simply a vehicle for every type of left-wing political advocacy, from needle exchange to affirmative action to HIV-AIDS policies. The center spearheaded one of New York's most powerful welfare-rights groups, and, to make sure that the supply of left-wing agitators remains high, it also developed a "community advocacy" curriculum for high schools. Nor does another NYU clinic, this one on immigrant rights, limit itself to law matters. Students lead protests and then rustle up media coverage for those protests—part of what the clinic calls "explor[ing] a range of ways of being a social justice lawyer."

> **"Students at one NYU clinic lead protests and then rustle up media coverage for those protests."**

If lawyering were merely a synonym for left-wing lobbying, many clinics could claim strong pedagogical justification. Students in Georgetown's State Policy Clinic work on "building a new economy that is inclusive, participatory, and environmentally sustainable." Yale's Legislative Advocacy Clinic aims to move Connecticut toward "a more progressive agenda in taxing and spending revenue." But if one of the main skills a lawyer needs is the ability to serve a client, why are there no real clients in these and many other clinics? The director of a Yale legal clinic was accurate when he told potential applicants recently that the "Lowenstein Human Rights clinic does not look like the practice of law."

To be sure, there is plenty of sue-the-socks-off-'em litigation emanating from law schools, mostly aimed at substituting an unelected lawyer's judgment about the allocation of taxpayer resources for the legislature's. Yale just created an education clinic as a vehicle for suing Connecticut over its school funding formulas. Stanford's Youth and Education Law Clinic put the East Palo Alto school district under judicial oversight for its special-education policies. Private employers are targets, too: Georgetown's Institute for Public Representation has been suing United Airlines for years, even as the airline went bankrupt, for its decision to subject a passenger to a heightened security check after 9/11. That United's motive was to protect the public, not racial animus, has not deterred the clinic's zeal.

These complex, years-long lawsuits violate another clinic rationale. Clinics provide students with the "unique educational experience [of] watch[ing] the progress of a case from the beginning to the end," asserts Larry Marshall, head of clinical education at Stanford Law School. Except that many don't. Political-change cases take years to complete, and students put to work on them resemble nothing so much as law-firm associates, droning away on some corner of a case that will ultimately redound to the greater glory and income of a partner. And the larger the case, the less likely that students will have any significant responsibility, as even clinic advocates admit. "If a case has been going on for five years, am I going to put a student in front of a judge to argue the remedy stage?" rhetorically asks Stanford's education clinician William Koski.

Ask why more clinics don't represent small-businessmen and you will invariably hear: We are "people's lawyers," representing clients who cannot afford attorneys. Oh, really? The hottest new clinic in law schools is the gay, lesbian, bisexual, and transgendered clinic. No mention in any of the catalog descriptions of income limits—and a good thing, too, because many gay men occupy the country's highest tax brackets. Stanford's Cyberlaw Clinic represented Swarthmore College students who wanted to

BETTMANN/CORBIS

post a company's proprietary documents on the Web; Swarthmore's $35,000-plus annual bill does not suggest an impoverished student body. Georgetown University's Institute for Public Representation represents the American Cancer Society, the American Heart Association, and the American Lung Association in tobacco litigation.

The idea that these charitable behemoths could not pay for their own lawyers is silly. Ditto the encyclopedia of left-wing advocacy organizations that Lani Guinier's students at Harvard and the Brennan Center's students at NYU work for. Not only do the ACLU, Common Cause, the Lawyers Committee for Civil Rights, NOW, the San Francisco AIDS Foundation, the NAACP, and the Children's Defense Fund rake in the dough from huge foundations and flush donors, but they can call on pro bono representation from the nation's most prestigious law firms.

Nor is penury the first word that comes to mind when observing the Natural Resources Defense Council's 25,000-square-foot New York headquarters, renovated in an environmentally sensitive fashion for $2.8 million in 1990. Yet NYU's law clinic places students with the NRDC, two of whose attorneys teach in the clinic. Could the NRDC, another creature of Ford Foundation largesse, fight industrial America without help from NYU law students? Undoubtedly.

Environmentalism itself is hardly a grassroots poor-people's movement, yet environmental clinics have been a law school staple since the 1970s. Shutting down employers, taking rarely seen land out of circulation for the sheer spiritual satisfaction of it, worrying about unproven risks from life-enhancing chemicals, and paying higher prices for eco-friendly products have historically been luxuries enjoyed by affluent white people. Awareness of that embarrassing truth led to one of the great innovations in save-the-earth politics: the idea of "environmental racism." Written into law by the Clinton-era EPA, this notion holds that pollution-generating industries target "disenfranchised" minority neighborhoods (a claim that empirical evidence contradicts) for such nefarious deeds as producing plastic, tires, and paper—and that they can be sued for allegedly doing so. The new slogan lets law schools continue their environmental crusades and pretend to be defending the poor as well.

Environmental law clinics have sued the army, cities, foresters, petrochemical producers, the EPA, landfills, farmers, and freighters, among many other evildoers. But one famous environmental fight deliciously demonstrated just how specious is the clinics' "we're representing the poor" justification. In 1997, Tulane's environmental law clinic barred a planned plastics plant from a predominantly black township between Baton Rouge and New Orleans. The clinic claimed that it was fighting "environmental racism," but many town residents, backed by the NAACP, had worked for years to win the Shintech company's new PVC plant for their parish. After Shintech threw in the towel, Louisiana's governor, furious at the loss of jobs, persuaded the state supreme court to change the rules governing when law students can represent clients. Under the new guidelines, students could represent community groups only if 51 percent of the group's members had incomes below 200 percent of federal poverty guidelines.

You would have thought the court had required law professors and law partners to donate a portion of their income to poor relief. The legal elite rose up in outrage at the requirement that law clinics actually do what they claim they're doing: represent the indigent. NYU's Brennan Center, the New York firm of Skadden, Arps, Slate, Meagher & Flom, the Association of American Law Schools, the American Association of University Professors, UC Berkeley's Center for Clinical Education, and the ACLU sued the Louisiana Supreme Court for violating professors' and students' First Amendment rights. With unlawyerlike illogic, David Udell, director of the Brennan Center's poverty program, railed: "Poor communities in Louisiana still virtually have nowhere to obtain justice." In the same spirit, the Association of American Law Schools protested that the Louisiana rules "will effectively deny law students the opportunity to provide access to justice for the working poor and for many poor community organizations in Louisiana."

That leaves one final rationale for clinics: consciousness-raising. Though many clinics by now have left the poor far behind in their pursuit of Bush administration war criminals, say, or hapless state legislators trying to balance their budgets, others still aim to put students in contact with the disenfranchised and oppressed, to inspire a new generation of activist poverty lawyers. With almost Dickensian self-parody, the Harvard faculty touts clinics as a way to see "dimensions of social reality that must be experienced to be understood. . . . Exposure to the problems and the cultures of poverty, and to the intersection of those realities with legal rules and practice, deepens understanding of the legal system and its relation to the society at large."

"Environmental law clinics have sued the army, cities, the EPA, landfills, and farmers, among other evildoers."

Yale's legal-services clinic provided an especially up-close opportunity for such experiential learning. In the mid-1990s, the clinic wanted to stop a police plan to evict vagrants from the New Haven train station. Director Stephen Wizner advocated that the students spend the night with the vagrants: "We encouraged these students to act on their belief that in order to be 'lawyers' for the homeless people in the train station, lawyers [*sic*] needed to be present to argue against the proposed police action. The students ended up spending the night at the train station. Through their physical presence, and by appealing to the individual police officers as human beings, these students 'won' their 'case.' The people were allowed to sleep in the train station, rather than being driven out into the freezing cold streets of New Haven."

Wizner calls such "social justice" interventions "human learning." But what really did the Yale students learn in their night of solidarity, and why are only some kinds of experience with social reality of interest to clinic advocates? Doubtless the Yale students learned that it is less comfortable to spend the night in a train station than at home. But did they learn about the drug and alcohol addictions, mental illness, and social disaffiliation that keep vagrants on the street? Have they experienced the travails of social workers who cannot persuade vagrants to enter shelters? Did they bond with the maintenance men who must clean up the feces, urine, and discarded paraphernalia left by the "homeless"? Did they learn about the commuters who shun public transit for fear of being accosted by mentally ill drug addicts? And are they confident that they know how keeping the "homeless" in public spaces affects their "clients' " motivation to seek help? Do they consider how in-your-face public vagrancy weakens the viability of cities?

Taking a vagrant home would contribute far more to the students' "consciousness-raising" about the "homeless," but Wizner says he would not encourage students to adopt a vagrant. Why? "Because I wouldn't take them home with me." Why not? "Because I don't want them in my house." Displaying a rare and admirable honesty, Wizner added: "There is a limit to my commitment to social justice."

Given this perfectly reasonable reluctance, one wonders why train commuters should have less choice about sharing space with the "homeless." Perhaps the clinic could defend the interests of train users in a clean, safe station? "We should represent poor people," Wizner responded. "I would not be interested in representing middle-class people in the train station." But of course, many public-transit riders, though not indigent, could not possibly afford to litigate such a suit on homeless policy.

In light of the claims made on clinical education's behalf, you would think that employers would demand to see such courses on an applicant's resumé. In fact, the marketplace shrugs. Former Cornell Law School dean Roger Cranton observes: "A lot of hiring partners disparage clinical education. They think of it as a policy mishmash, not as an opportunity to learn skills." Even the clinicians know this awful truth. "Talking to our grads, partners don't give a damn about clinics, because they aren't providing 'relevant skills,'" says Yale's Wizner, with considerable sarcasm. "The hiring partners want someone who can rack up 2,500 billables, by reviewing documents."

Especially since clinical education is so expensive—the faculty-to-student ratio is orders of magnitude smaller than in large lecture courses—schools should either discontinue this pedagogically irrelevant subsidy to political agitation, or they should open clinics up to currently disfavored topics that would provide relevant practical training. Ending clinics is not likely: the ABA and the Association of American Law Schools are urging schools to give tenure-like rights, such as voting on new faculty hires, to clinical professors—a move that will only push the schools further leftward. All the more imperative, then, to broaden the range of clinical offerings.

If they were really serious about preparing students for their legal careers, every school would have a transactional clinic for small businesses. The vast majority of lawyers advise clients on business deals—negotiating contracts, setting up corporations and partnerships, trying to avoid legal and tax liabilities, and arranging securities offerings and registrations. As NYU's Martin Guggenheim acknowledges, "Students are entering a world where litigation is the least likely thing that they will do."

In grudging recognition of this reality, some law schools do offer transactional clinics, but most give priority to nonprofits. Harvard's Community Enterprise Project, for example, works chiefly with "community development" groups, while Yale's Housing and Community Development Clinic offers "consultation to community groups, particularly nonprofit organizations involved in affordable housing and economic development efforts." But getting a nonprofit up and running is far less complicated, and less pedagogically useful, than advising a for-profit venture.

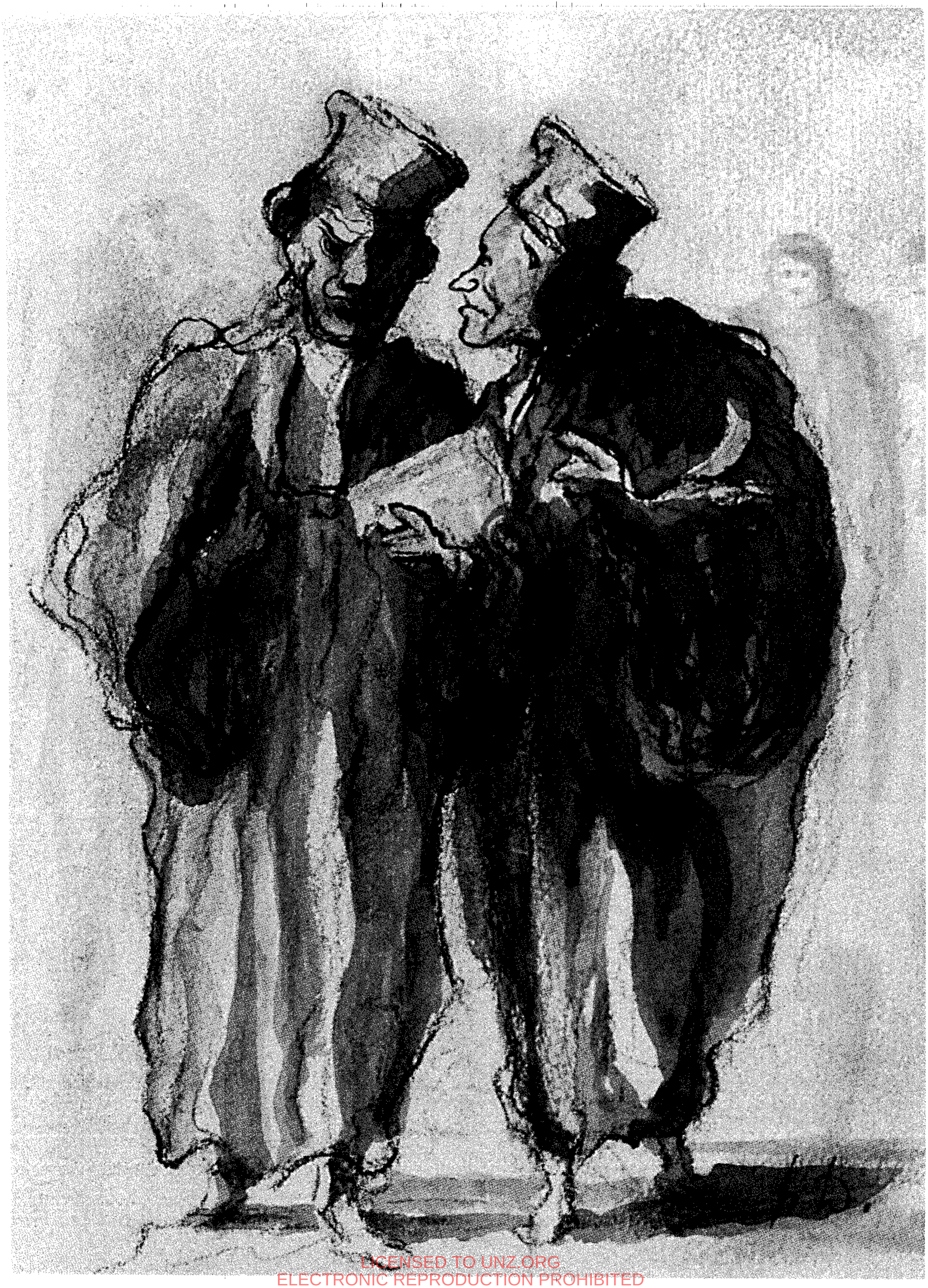
The Institute for Justice runs perhaps the only exclusively for-profit business clinic in the country, at the University of Chicago. The law school at first assumed that the clinic would help businesses seek minority set-asides, recalls the Institute for Justice's director, Chip Mellor. "We said, 'That's a deal-breaker. We only do private sector advancement.' The Dean blinked, and said, 'Well, OK.' They had never thought anything to the contrary."

It is law school students, not professors, who are spearheading the creation of transactional clinics, and students are crowding into such clinics once they are created. The demand for such clinics is as high outside the school as in it. Struggling businesses, including those run by minority entrepreneurs, are hurting for lack of counsel, students have found. Dan Ehrlich, a second-year student at the University of St. Thomas School of Law in Minneapolis, has been leading the establishment of a business clinic there. "There is a *huge* need for such an enterprise," he says. The federal Small Business Administration offices in Minneapolis are overwhelmed with would-be entrepreneurs seeking assistance, he notes.

Just because such entrepreneurs hope to make a profit doesn't mean that they can afford legal counsel. "I opened up underfunded, and I've been working undercapitalized ever since," says Shawna Spencer, the shoe-maven client of the University of Chicago entrepreneurship clinic. "Every small business operates undercapitalized, because loans don't exist. We don't have money for marketing; we *definitely* don't have money to hire an attorney."

The possibility of launching future job-creators like Spencer, especially when they come from inner-city backgrounds, ought to fire up the "social justice" crowd. "The schools aren't looking at the bigger picture," Spencer says, when told that the University of Chicago entrepreneurship clinic is unique in helping only for-profit businesses. "A seamstress in a housing project doesn't know that she could become a renowned designer.

BASS MUSEUM OF ART/CORBIS



When you're helping to realize someone's potential, you're creating less poverty."

Business clinics not only fit the "fighting poverty" rationale for clinics; they meet the experiential test as well. Working for a small business "deepens understanding of the legal system and its relation to the society at large," in the Harvard faculty formula. David Neil incorporated and tried to get licensing permits for a small moving company while enrolled in the University of Chicago's entrepreneurship clinic. "It was an eye-opener," Neil says. The owner needed to pay $1,000 in a nonrefundable fee just to apply for the permits. Such barriers to entry have a "chilling effect" on low-income entrepreneurs, Neil observed. "The experience taught me that the law is sometimes used to perpetuate the status quo," he says.

For schools interested in giving students hands-on training, representing the unrepresented, and providing "human learning," there is a world of clients and causes (however politically incorrect they may be) that meet every justification offered for the current one-sided array of clinics. Herewith some possible topics:

Representing small-businessmen, landlords, and property owners. The thicket of environmental law has grown so complex that "no one can stay out of trouble," according to former Natural Resources Defense Council litigator David Schoenbrod, author of *Saving Our Environment from Washington*. Unlike big businesses, small outfits have trouble affording lawyers to hack through those rules or to meet the EPA's onerous paperwork requirements. Providing them counsel would nicely balance the political bias of current environmental clinics and provide a real learning experience.

The country abounds with small landowners barred from developing their property because of zoning regulations or government eminent-domain actions. Only two clinics in the country defend such landowners—at George Mason's and Chapman's law schools—yet property rights and federalism cases pose cutting-edge constitutional-law issues.

Defending tenants against eviction is a law school staple. NYU's civil rights clinic is currently representing a tenant whom the landlord claims is "engaging in illegal drug activities in her apartment," according to the clinic catalog description. Certainly the tenant needs legal representation. But it would be equally useful for students to experience New York's housing court from the landlord's side, where getting rid of a dope-dealing tenant requires Herculean efforts against pro-tenant rules and judges. Numerous small landlords have scraped together just enough for a down payment on a two- or three-unit property, which they can pay off only by renting out the apartments that they are not occupying. When their tenants turn deadbeat or commit vandalism, their investment is at risk. "Human learning" in a small-landlords clinic might include surveying tenants in buildings where a resident drug trader is receiving free representation from another clinic. The "silent majority of tenants back landlords' efforts to get sleazeballs out, but they are afraid to talk because of retribution," says Carol Abrams, spokesman for New York's Housing Preservation and Development Department.

Defending the authority of school districts and teachers. Stanford's education law clinic just put the Berkeley, California, school district under court order for allegedly "discriminatorily" disciplining black and Latino students. The teachers will have to submit to "sensitivity training," and the schools will have to take corrective action to make sure that minorities are not being disciplined at rates disproportionate to their representation in the school population. (And if minorities really do cause disproportionate violence in the schools, too bad.) Students in a clinic dedicated to upholding school authority might shadow a principal in a district operating under a court-imposed consent decree, to experience the barriers to removing a disruptive student. Clinic students could also attend a classroom where the teacher must worry about whether his disciplinary decisions will be challenged as illegal and racist by pupils, lawyers, and judges.

Representing crime victims. The only crime victims currently on law schools' radar are domestic violence victims, but boy, do they get attention. Domestic violence clinics abound, taking a law-and-order stance that would be unthinkable for crimes where "gender" is not implicated. Many schools do offer a prosecution clinic to balance out their numerous criminal-defense clinics, but prosecutors famously give short shrift to victims' perspectives.

Victims' rights is ripe for the creative lawyering that transformed the legal universe in the 1960s. "There are many judges around the country who would be responsive to innovative arguments" in the field, says criminal-law theorist and Columbia Law School professor George Fletcher. But currently the only significant victims' rights clinic is at Arizona State University. Explains director Keli Luther: "Because there is so little case law in the field, students have to think outside the box. They're drafting motions that have never been written before." The clinic is experimenting with creative ways of seeking restitution, for example, such as filing liens on defendants' stolen stereos, cars, and jewelry.

> **"Victims' rights is ripe for the creative lawyering that transformed the legal universe in the 1960s."**

Allowing students to work with victims would provide the sort of "human learning" that clinicians advocate. Seeing how crime affects families and communities would seem to be one of those "dimensions of social reality that must be experienced to be understood." And as for understanding the "intersection of realities with legal rules and practice," in the Harvard faculty's words, exposing students to victims of criminals who have escaped conviction thanks to defendants' rights rulings, or who have been assaulted by criminals out on early parole, surely would "deepen understanding of the legal system and its relation to the society at large."

Defending law officers. New York and other big cities host a cottage industry of suing cops for false arrest, whenever prosecutors decide not to file charges against an arrestee. A clinic could help police departments litigate such cases, rather than settle them, as they usually do, at considerable expense to taxpayers. Similarly, prisoners (often represented by clinics and fancy firms) sue prisons constantly, alleging various constitutional violations. Prison defense work would offer one of the best constitutional-law practices around, because the issues presented under the First, Eighth, and Fourteenth Amendments are so richly complex.

Supporting a colorblind America. Not a single civil rights clinic has pushed to end racial preferences, which would make the Constitution's promise of an America without color distinctions a reality. The targets for such an originalist civil rights clinic—one that would realize Martin Luther King's dream—are legion.

These examples center on litigation, unlike the law schools' current emphasis on policy advocacy, protest, and community organizing. But if the schools think they must provide advocacy experience, pro-life clinics could send students to state capitols to demand that parents be given a say over their children's abortion decisions. Clinics could organize inner-city residents to demand crime-free neighborhoods, whether through an end to the racial data collection mandates on police departments that discourage aggressive policing, or through tougher sentencing laws and parole conditions. Students could stuff envelopes for would-be entrepreneurs as they lobby for less confiscatory tax policies.

The proponents of social justice lawyering are unlikely to acknowledge any time soon that their revolution has triggered family breakdown, unleashed an epidemic of crime in inner-city neighborhoods, and burdened entrepreneurs with unnecessary regulations. At the very least, however, law schools should offer students the chance to question for themselves whether such lawyering is the best way to help society. Opening up clinics to radical perspectives on the benefits of limited government and personal responsibility would be a good place to start.

What Colleges Forget to Teach

Higher education could heal itself by teaching civics—not race, class, and gender.

Robert P. George

The university is worth fighting for. No other institution can carry the burden of educating our young people. That's why we must redouble our efforts to restore integrity, civility, and rigorous standards in American higher education—particularly in the area of civic education.

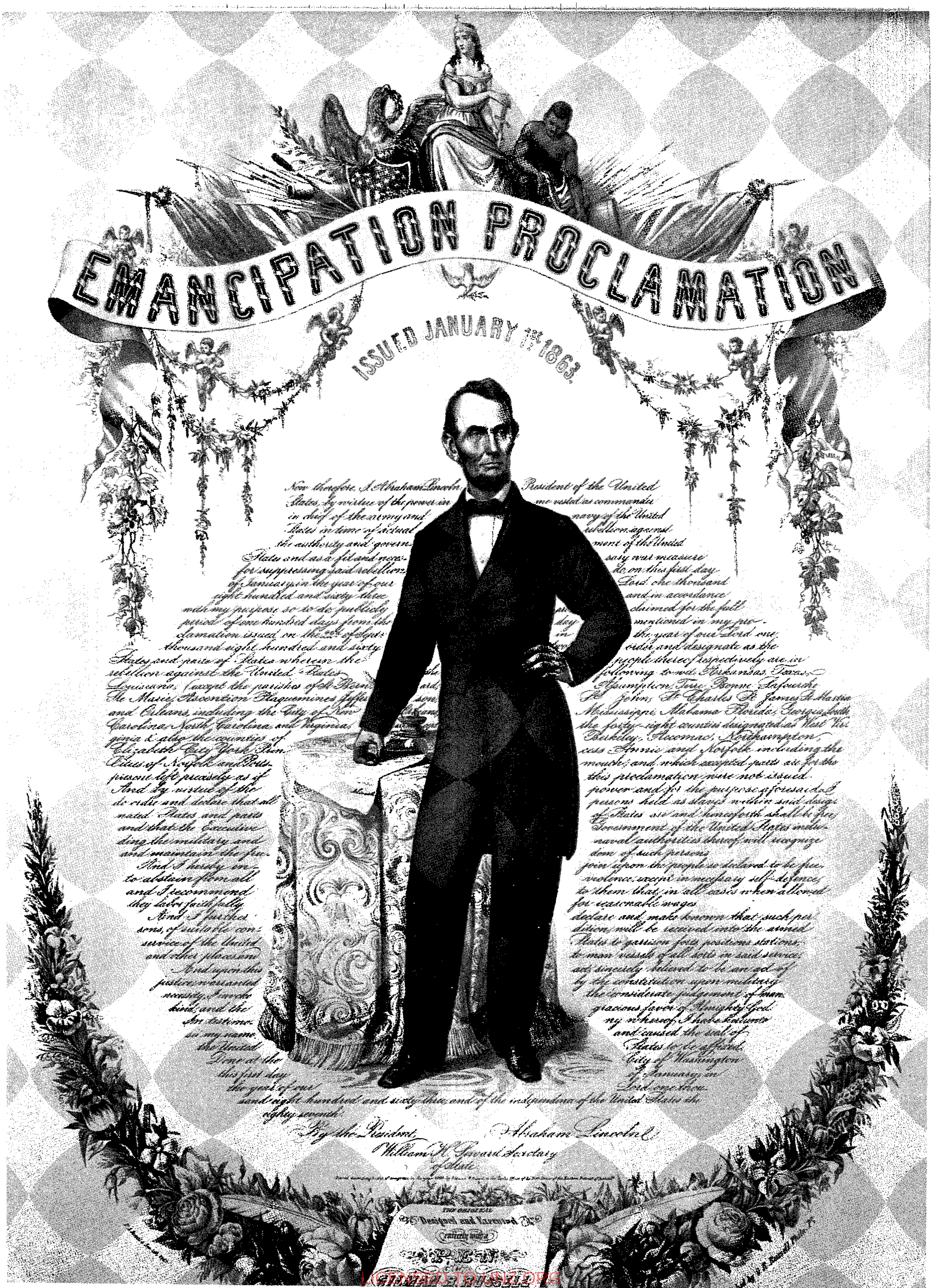
I'll be the first to admit that the situation is dire. I sympathize when critics throw up their hands in despair. I sometimes feel that way myself. Darkness often prevails in places where the light of learning should shine. I often trade horror stories with my friend Hadley Arkes, a distinguished scholar of jurisprudence and political theory at Amherst. On one occasion, I explained that the Woodrow Wilson School of Public and International Affairs at Princeton was sponsoring a viciously anti-Catholic art exhibit—one that it would never even permit were some favored faith or cause, such as Islam or gay rights, its target. Every year, some outrage along these lines seems to prove that anti-Catholicism really is the anti-Semitism of the intellectuals, though anyone familiar with academic life today knows that anti-Semitism itself is making a run at being the anti-Semitism of the intellectuals.

Professor Arkes listened sympathetically and said, "Things have gotten pretty bad here at Amherst, too: we've granted tenure in political science to a guy promoting a theory explaining the foreign policy of George H. W. Bush by reference to his alleged homoerotic attraction to Ronald Reagan." "Well," I replied, "Princeton has topped that. We've given a distinguished chair in bioethics to a fellow who insists that eating animals is morally wrong, but that killing newborn human infants can be a perfectly moral choice." (This professor has since gone on to say that there would be nothing wrong with a society in which large numbers of children were conceived, born, and then killed in infancy to obtain transplantable organs.)

And so we go back and forth with each other, in a macabre game of one-upmanship.

Still, teaching at Princeton is in many ways a joy. I have the privilege of instructing students who actually know when the Civil War took place. Even before arriving at Princeton, they know that Lee surrendered to Grant, not to

CORBIS



Now therefore, I Abraham Lincoln
States, by virtue of the power in
in chief of the army and
States in time of actual
the authority and govern-
States and as a fit and neces-
for suppressing said rebellion,
of January, in the year of our
eight hundred and sixty three
with my purpose so to do publicly
period of one hundred days from the
clamation issued on the 22d of Sept.
thousand eight hundred and sixty
States and parts of States wherein the
rebellion against the United States
Louisiana, (except the parishes of St. Bern
Ste Marie, Ascension, Plaquemines, Jeffe
and Orleans, including the City of New
Carolina, North Carolina and Virginia,
ginia & also the counties of
Elizabeth City, York, Prin.
Cities of Norfolk and Ports-
present left precisely as if
And by virtue of the
do order and declare that all
nated States and parts
and that the Executive
ding the military and
and maintain the free-
And I hereby en-
to abstain from all
and I recommend
they labor faithfully
And I further
sons, of suitable con-
service of the United
and other places and
And upon this
justice, warranted
necessity, I invoke
kind, and the
In testimo-
set my name
the United
Done at the
this first day
the year of our
sand eight hundred and sixty three, and of the independence of the United States the
eighty seventh.

President of the United
me vested as commander
navy of the United
rebellion against
ment of the United
sary war measure
do, on this first day
Lord one thousand
and in accordance
claimed for the full
mentioned in my pro-
the year of our Lord one
order and designate as the
people thereof respectively are in
following to wit: Arkansas, Texas,
Assumption, Terre Bonne, Lafourche,
St. John, St. Charles, St. James, St. Martin
Mississippi, Alabama, Florida, Georgia, South
the forty-eight counties designated as West Vir-
Berkeley, Accomac, Northampton,
cess Anne and Norfolk including the
mouth; and which excepted parts are for the
this proclamation were not issued.
power and for the purpose aforesaid, I
persons held as slaves within said desig-
of States are and henceforth shall be free
Government of the United States inclu-
naval authorities thereof will recognize
dom of such persons.
join upon the people so declared to be free
violence, except in necessary self-defence,
to them that, in all cases when allowed,
for reasonable wages.
declare and make known that such per-
dition, will be received into the armed
States to garrison forts, positions, stations,
to man vessels of all sorts in said service.
act, sincerely believed to be an act of
by the constitution upon military
the considerate judgment of man-
gracious favor of Almighty God.
ny whereof, I have hereunto
and caused the seal of
States to be affixed.
City of Washington
of January, in
Lord one thou-

By the President, Abraham Lincoln
William H. Seward Secretary
of State

Eisenhower, at Appomattox Court House. Most know that Philadelphia, not Washington, D.C., played host to the constitutional convention. Few would list Alexander Hamilton among the most important presidents, because they know that he was never president. Some can identify the cabinet office that he held and even give a decent account of his differences with Thomas Jefferson. Speaking of whom, all my students know that Jefferson owned slaves—but then, everybody seems to know that, even those who know nothing else about him. My students, though, also know that it was Franklin D. Roosevelt, not his cousin Teddy, or Harry Truman, or JFK, who promised Americans a New Deal. Some can even tell you that the Supreme Court invalidated some early New Deal legislation and that FDR responded with a plan to pack the Court. Yes, my students and students at elite universities around the country come to campus knowing American history pretty well—and wanting to know it a lot better.

Many of these young men and women value historical knowledge not merely for its own sake but because they want to be good citizens. More, they seek to be of genuine service to fellow citizens. Many hope to be legislators, judges, even president. They know that knowledge of American history is vital to effective citizenship and service.

But they also need an understanding of American civics—particularly the principles of the Constitution. For all their academic achievement, students at Princeton and Yale and Stanford and Harvard and other schools that attract America's most talented young people rarely come to campus with a sound grasp of the philosophy of America's constitutional government. How did the Founding Fathers seek, via the institutions that the Constitution created, to build and maintain a regime of ordered liberty? Even some of our best-informed students think something along these lines: the Framers set down a list of basic freedoms in a Bill of Rights, which an independent judiciary, protected from the vicissitudes of politics, would then enforce.

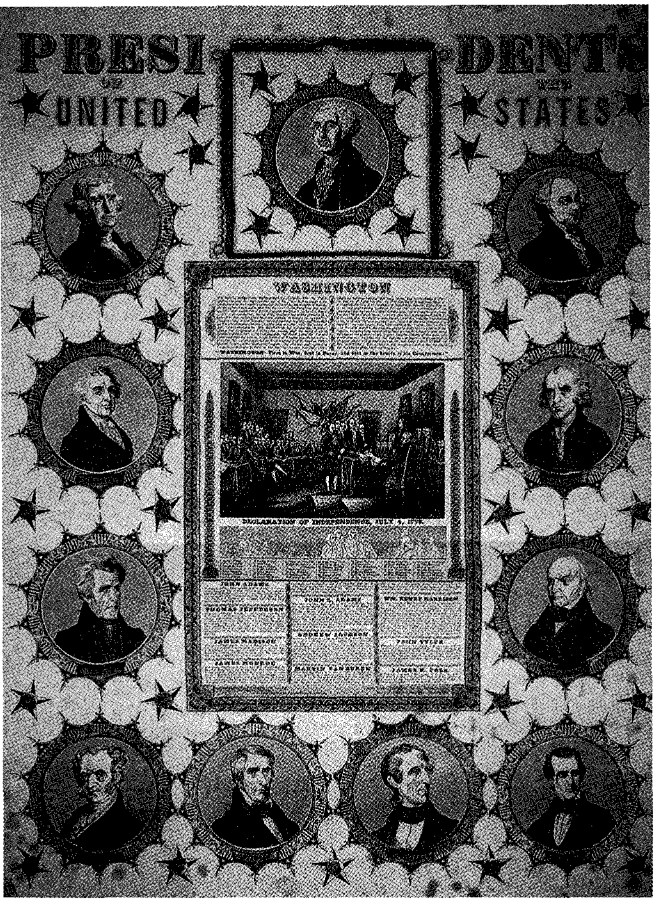
It's the rare student indeed who enters the classroom already aware that the Framers believed that the true bulwark of liberty was limited government. Few students comprehend the crucial distinction between (on the one hand) the national government as one of delegated and enumerated powers, and (on the other) the states as governments of general jurisdiction, exercising police powers to protect public health, safety, and morals, and to advance the general welfare. If anything, they imagine that it's the other way around. Thus they have no comprehension as to why leading supporters of the Constitution objected to a Bill of Rights, worried that it could compromise the delegated-powers doctrine and thus undermine the true liberty-securing principle of limited government.

Good students these days have heard of federalism, yet they have little appreciation of how it works or why the Founders thought it so vital. They've heard of the separation of powers and often can sketch how the system of checks and balances should work. But if one asks, for example, "Who checks the courts?" they cannot give a satisfactory answer.

The students' lack of awareness flows partly from the conception of the American civic order that they have drunk in, which treats courts as if they aren't really part of the government. Judges, on this view, are "non-political" actors whose job is to keep politicians in line with what elite circles regard as enlightened opinions. Judicial supremacy, of the kind that Jefferson and Lincoln stingingly condemned, thus winds up uncritically assumed to be sound constitutional law. The idea that the courts themselves could violate the Constitution by, for example, usurping authority that the Constitution vests in other branches of government, is off the radar screen.

Lacking basic knowledge of the American Founders' political philosophy and of the principles that they enshrined in the Constitution, students often fall prey to the notion that ours is a "Living Constitution," whose actual words matter little. On the Living Constitution theory, judges—especially Supreme Court justices—serve as members of a kind of standing constitutional convention whose role is to invalidate legislation that progressive circles regard as antiquated or retrograde, all in the name of adapting the Constitution to keep up with the times.

It doesn't take much to expose the absurdity of this theory. The purpose of enshrining principles in a constitution is to ensure that the nation's fundamental values remain honored even if they fall out of fashion. As for adapting the nation's laws to keep up with the times, legislators can—and should—take care of that task. The proper role of courts when they exercise the power of judicial review is essentially a conserving (you could even say "conservative") one. It is not to change anything but rather to place limits on what one can change.



THE ART ARCHIVE/BODLEIAN LIBRARY OXFORD

Does this mean that our Constitution is "dead"? No: the Constitution's principles are "living" in the sense that they can apply validly even to matters that the Founders themselves could not have anticipated. The original understanding of Fourth Amendment principles governing searches and seizures, for example, can reliably extend to cover today's controversies about computer files, cyber-storage, and electronic surveillance. So to reject, as we should, the Living Constitution and its anticonstitutional doctrine of virtually unlimited judicial power is by no means to treat our Constitution as a dead letter. Rather, it is to treat the Constitution as law—supreme law—binding on, and limiting the power of, every branch of government and agency of the state, including the courts.

What is the source of this educational breakdown? The trouble isn't the students—they're bright and eager to learn. It's that too few teachers are presenting students with the Founders' philosophy, much less introducing them to the great issues, some still with us today, that divided the Founders. And if teachers aren't teaching the Founding's principles, where will students learn them? They're not likely to get any sense of the distinction between the delegated powers of the national government and the general jurisdiction of the states from any newspapers, national magazines, or television news networks, that's for sure. Have the editors of the *New York Times* and the folks at CBS News even heard of that distinction yet? News travels slowly, true; but it shouldn't take 218 years.

The solution to this educational breakdown is straightforward: we need to make a commitment at every level of schooling and within the public media to promote a deep awareness of the principles of the American Founding. Why educate students into archaism? some will doubtless object. Surely governing principles set forth in the eighteenth century have little relevance to us in the twenty-first. But American ideals, as embodied preeminently in the Declaration of Independence, are universal and timeless. They have force wherever there are human beings, fallible (indeed, as the Founders recognized, fallen) creatures, yet images of God in their possession of reason and freedom—beings, as the Declaration says, "endowed by their Creator with certain unalienable rights."

The constitutional scheme that the Founders devised for the lawful governance of human beings and for the preservation of their sacred rights is the world's greatest triumph of practical political science. Of course, we shouldn't treat our institutions as if they're perfect—the Founders provided, after all, for their possible revision by constitutional amendment. True civic education isn't indoctrination. The Founders themselves weren't of one mind as to the proper interpretation of their handiwork in every respect. And reasonable people of goodwill, of course, disagree about key matters of constitutional interpretation. We do our students a wonderful service when we invite them into the great historical and contemporary debates about the meaning of our fundamental law in controversial cases. To do that, though, we must equip them with the historical knowledge and the philosophical understanding necessary if they're to evaluate intelligently the competing arguments.

We needn't teach that our institutions are uniquely just—that any polity that seeks to respect people's rights and preserve liberties must copy them precisely. But anyone who sincerely seeks the truth will see that ours are indeed worthy institutions that have served Americans well whenever our people and leaders have shown the wisdom and mustered the fortitude to honor and live by them. The fact is, freedom-loving people throughout the world—even in an age darkened by widespread anti-Americanism—draw inspiration from American ideals and look to American institutions as the gold standard of republican government. Even critics of American policy feel that they must pay lip service to our ideals of democracy, limited government, equality before the law, civil liberty, private property, the free economy, and the rule of law.

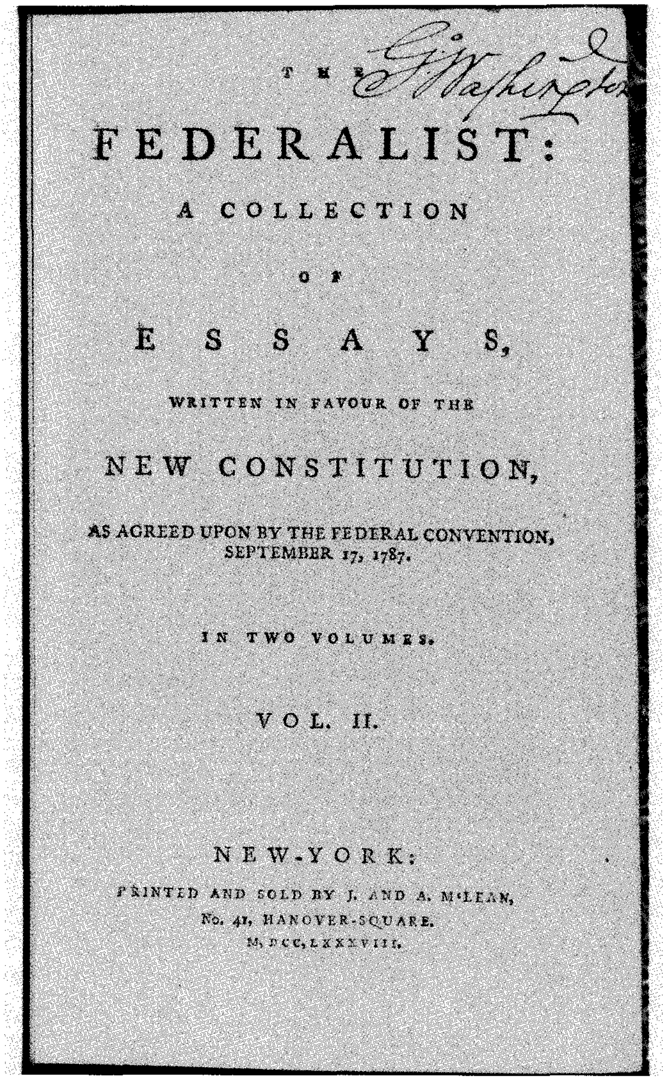
Madison did not doubt that it would be so: "The free system of government we have established," he wrote, "is so congenial with reason, with common sense, and with a universal feeling that it must produce approbation and a desire of imitation, as avenues may be found for truth to the knowledge of nations." In Eastern Europe, much of Latin America, and parts of South Asia, Africa, and the Middle East, "avenues have been found for truth to the knowledge of nations." Yet, at the same time, in the U.S. itself, public comprehension of "the free system of government" that Madison and his "founding brothers" bequeathed to us has eroded. We must reverse that trend. Otherwise, the quality of citizenship and statesmanship will inevitably suffer.

Madison famously observed that "only a well-educated people can be permanently a free people." Yet some today seem to think otherwise. They don't necessarily doubt that the impoverishment of civic understanding erodes citizenship and statesmanship, but they wonder why we can't get along perfectly well anyway. We are, after all, the richest, most powerful nation in world history. We're on top, and despite emerging economic challenges from China, maybe India, we're likely to stay there. Isn't that enough?

To this, a double reply. First, history shows us that basic freedoms are hard-won and easily lost. The institutions that preserve freedom can be crumbling even as they appear strong. Severe economic strains and other fundamental challenges can tempt people to compromise or sacrifice even basic freedoms. As Madison knew, it is *conviction* born of knowledge—civic understanding—that is our bulwark, our only true security, in the face of such temptations.

Second, as Plato (though no admirer of democracy) observes, the goal of the polis—the political order—isn't merely to establish security but also to provide the conditions for citizens to live good and decent lives, worthy of human beings as rational and moral creatures. Our founders saw this crucial philosophical point. The purpose of the Declaration of Independence and its principles of civic life, Jefferson wrote shortly before he died, were "not to find out new principles or new arguments never before thought of, nor merely to say things which had never been said before, but to place before mankind the common sense of the subject. . . . All its authority rests on the harmonizing sentiments of the day, whether expressed in conversation, in letters, printed essays, or in the elementary books of public right, as Aristotle, Cicero, Locke, Sydney, etc."

These "elementary books" inform us that statesmanship and, especially, citizenship, though key means to other ends, possess a value greater than merely instrumental. When we carry out our civic responsibilities in an informed way, we find ourselves ennobled as individuals and as a community. Even if a nation could remain on top in the global competition for military and economic superiority, and even if its basic political structure could last more or less indefinitely, the people of that nation, if they remain ignorant of the moral foundations of that structure, would be impoverished.



Go Washington

THE
FEDERALIST:
A COLLECTION
OF
ESSAYS,
WRITTEN IN FAVOUR OF THE
NEW CONSTITUTION,
AS AGREED UPON BY THE FEDERAL CONVENTION,
SEPTEMBER 17, 1787.

IN TWO VOLUMES.

VOL. II.

NEW-YORK:
PRINTED AND SOLD BY J. AND A. M'LEAN,
No. 41, HANOVER-SQUARE.
M,DCC,LXXXVIII.

THE PIERPONT MORGAN LIBRARY/ART RESOURCE, NY

Whatever one thinks of the decision to invade Iraq, one cannot fail to find deeply moving the desire of the vast majority of Iraqis to be democratic citizens—a desire that cannot be accounted for merely by noting the tendency of democracies over time to be prosperous and stable. Rather, Iraqis proudly displaying ink-stained fingers are saying something that we Americans, at some level, still appreciate: that democratic citizenship fulfills an important aspect of our humanity. It is so inherently desirable that Iraqi men and women have risked their lives to exercise the franchise, just as it caused those eighteenth-century Americans who pledged their "lives, fortunes, and sacred honor" to risk the king's hangman's noose.

Our posture cannot be—must not be—complacent. We must firmly resolve to make reform and renewal—whatever the obstacles, whatever the costs—our constant endeavor. We must not let the resistance of entrenched interests or recalcitrant ideological forces in the academic establishment, the funding bureaucracies, or anywhere else intimidate us. Let us seize every opportunity, marshaling our resources and deploying our wits to advance the cause of reform wherever we detect an opening, however much the weeds may obscure it. The reform and renewal of civic education in our nation is a noble cause. We must make it an urgent priority. ▩

New Philanthropists Talk Left, Act Right

Individual uplift, not social change, is their keynote.

Howard Husock

It's hard to imagine unlikelier allies than the Bush White House and the Echoing Green Foundation. The New York–based philanthropy's self-described mission of "social justice" includes bankrolling left-wing groups that work "to close deeply rooted social, economic, and political inequities"—groups like Justice in Exile, an advocate for victims stuck in "law free zones," among which it counts the U.S.'s Guantánamo Bay military prison. Yet last February, First Lady Laura Bush, touring the nation to draw attention to effective programs for disadvantaged youths, visited Think Detroit, an inner-city sports and computer training program whose original funder was . . . Echoing Green.

As it turns out, Mrs. Bush's call on Think Detroit wasn't so strange: the nonprofit embodies some pretty conservative values. The motto of the two young University of Michigan law graduates who founded it—a white Republican and a black Democrat—is "Build character through sports." Athletic competition, they believed, could imbue urban kids with a code of conduct that would let them be macho without being violent and would teach them to accept and work within the rules, improving their life prospects. The two have signed up more than 500 coaches to administer the program, many of them black men who, they hope, will serve as father figures for the 6,000 youngsters enrolled, most lacking dads in their lives. "My personal mission," says co-founder Michael Tenbusch, "was to instill in the kids the belief that they can achieve the American dream."

For its part, Echoing Green uses quite different—and very liberal—language to explain why it helped Think Detroit get off the ground. The program's computer training, recalls foundation executive director Cheryl Dorsey, "fit very nicely in the whole 'digital divide' issue, which was a hot equity issue for many community-based organizations and social justice activists." Yet that such a funder would have anything in common with the Bush administration points to a significant change taking place in the nature of the nonprofits being created to serve the poor and in the foundations that subsidize them.

Call it talking left, acting right.

We've grown accustomed to the partisan divide of American politics extending to the nonprofit world: as blue state is to red, so Ford has been to Scaife, and MacArthur to Olin. But a new philanthropic movement, while often justifying its work with left-wing bromides, has begun to tackle the problems of the urban poor in ways that hark back to an older conservative model of charity, emphasizing individual responsibility and hard work as the tools that the poor need to get ahead. These "social entrepreneurs," as Think Detroit and kindred organizations have dubbed themselves, typically depend not just on grants but also on their own earnings. And the grants that they do get tend to come not from government or old liberal foundations but from a new sort of funder: "venture philanthropists" who made their fortunes from the past quarter-century's information-technology boom. These funders—including Echoing Green, which has disbursed $22 million since 1987, thanks to a fat endowment provided by principals of the General Atlantic tech-investment firm—are often explicit about targeting social entrepreneurs in their giving.

Though the rhetoric of social entrepreneurs (and their financial backers) can indeed seem indistinguishable from the hoariest left liberalism, there's a strong expectation that their programs must be able to measure concrete results—

Think Detroit uses sports to teach teamwork and respect for the rules.

COURTESY OF THINK DETROIT

THINK DETROIT
9

stand-ins for a business bottom line. And compared with the liberal philanthropies of a generation ago, social entrepreneurs focus less (if at all) on political advocacy or litigation aimed at policy change and far more on helping the poor to get ahead as individuals through job training, mentoring, and tutoring. "Changing the system," in other words, has taken a backseat to incremental, verifiable improvement in the lives of those assisted. Without quite being aware of the change themselves, at least some in the nonprofit world have moved back toward the provision of what Andrew Carnegie, known for the free libraries he created across America after making his fortune in steel, called "ladders on which the aspiring can rise."

If you want to understand the kind of failed philanthropy that the social entrepreneurship movement has left behind, you'll find no clearer statement of it than a report from something called the Filer Commission. It has been exactly 30 years since a little-remembered but significant panel called the National Commission on Private Philanthropy and Public Needs submitted its four-volume survey on how American philanthropies should be governed, and what sorts of initiatives they should fund. Known as the Filer Commission, after the insurance executive whom commission organizer John D. Rockefeller III handpicked to head it, the panel marked the last major national nonpartisan effort to assess the government regulation of nonprofits and, more broadly, "the role of philanthropic giving in the United States."

The commission gave powerful voice to the era's left consensus. The traditional interests of American philanthropy—higher education, medicine, public health, individual uplift, and the arts—were obsolete, that consensus held. Commission member Alan Pfifer, then president of the Carnegie Corporation, expressed the new spirit: "The benefit should go to those who are most in need . . . that is, the poor, the downtrodden, those that have suffered discrimination." Not only would the new philanthropy focus on the worst-off instead of those willing to help themselves; it must instead be "an innovative, fearless agent of social change," as one grantee put it. "There is ample evidence," opined a commission research paper, "that our society itself will have to undergo radical surgery if our democratic way of life is to survive. The market mechanism, long the mainstay of economic life, is breaking down and will have to be modified." No entrepreneurship here—social or actual.

The Filer Commission report gave high-profile legitimacy to the activist philanthropy that the Ford Foundation and several other funders had pioneered in the mid-1960s, in the run-up to the War on Poverty, implicitly touting it as the wave of the future. And that's exactly what it proved to be over the next 15 years. The signature nonprofits of the era included leftist advocacy groups such as the National Welfare Rights Organization, which fought to remove welfare's "stigma" and to expand welfare rolls dramatically, adopting a highly confrontational tactic that it called "change through crisis." Also typical were such still-extant organizations as the Association of Communities for Reform Now (Acorn), itself inspired by NWRO's tactics; Ralph Nader's Public Citizen, which exposed scandal in institutions, whether corporate or governmental; and the Children's Defense Fund, which didn't offer care for children but instead lobbied to expand government services and welfare payments. Thomas Sowell's phrase describing contemporary black politics—"protest and seek government action"—captures the guiding philosophy of these organizations, which leading philanthropies paid billions to support.

Even when donors launched programs to provide concrete assistance, as opposed to advocacy, they usually spent the money to help places and groups, not individuals. Enthusiasm swelled for "community development" programs, for instance, with foundations pouring money into the physical renovation of low-income neighborhoods, under the assumption that the injustice of the "system" made the "powerless" residents of blighted urban areas unable to improve things by their own efforts alone.

By the eighties, it became apparent to all but the most ideologically blinkered that the Filer

Commission–approved approach to poverty relief was a dismal failure, helping to spawn dependency and social pathology in the very people it intended to uplift. The rise of the social entrepreneurship movement was a reaction to this failure. The term "social entrepreneur" originated in the Reagan years with former Carter-administration environmental official Bill Drayton's left-leaning Ashoka organization, which used the phrase with a certain antibusiness twist to suggest a moral alternative to the self-interested, presumptively antisocial, business entrepreneur. Soon, though, management schools began to take the phrase seriously and flesh it out with a full theoretical treatment. The quality of the academic literature varied wildly, but it had the crucial real-world effect of validating the social entrepreneurship idea for a new generation of young, business-minded individuals, who decided to implement it in practice either by starting results-oriented nonprofits to help the poor or by funding them, as a kind of investment with measurable returns.

> **"Compared with the liberal philanthropies of a generation ago, social entrepreneurs focus less (if at all) on advocacy."**

Fast-forward to the fifth floor of an old industrial building near Boston's South Station. There, some 40 recent Boston-area public school graduates and GED recipients—average age 20, average GPA 1.9, virtually all of them black or Hispanic—report every day for six months to the job-training and -readiness program known as Year Up. It's an instructive example of the shift in philanthropic thinking.

Founded by onetime high-tech entrepreneur and Harvard Business School grad Gerald Chertavian, the five-year-old program, which has expanded from Boston and Cambridge to Washington and Providence (with New York soon to come), has no shortage of left-liberal atmospherics (there's even a photo in the lobby of Senator Edward Kennedy paying a visit). But Year Up promotes the values that the founder knew to be true from his own experience—that, in America, good habits and good education enable one to advance.

Year Up accents those values right from the outset. In sharp contrast to War on Poverty or Filer Commission–style programs for the disadvantaged, where the only criterion for receiving aid was simply being poor, Year Up looks to help the truly helpable—people who not only want to lift themselves up but are willing to make the needed effort. Only half the applicants make it through a tough screening process that includes both a written application and an interview. Once enrolled, they'll hear a lot about personal responsibility and self-improvement. On a recent morning, for example, participants got computer instruction, some advice on crafting business plans (nail salons, restaurants, and nightclubs are popular aspirations), and a stern warning. No visitors without permission—especially drug users like the ones who showed up the other day. Make sure you read the newspaper or watch the news—there's a current-events class to prepare you to discuss topics that you might hear about over the water cooler at work, something that might help you fit in socially in a middle-class work environment. Unexcused absences and bad attitudes lead to expulsion—almost 30 percent of the most recent class was "fired." A sign on the wall echoes the responsibility-first theme: WORK HARD, STRIVE TO LEARN, BE ACCOUNTABLE.

Year Up places its graduates in back-office jobs at some of Boston's major financial-services and health-care employers, who provide over half of the program's $4.8 million annual budget. (Chertavian expresses little interest in government funding.) These "apprenticeship partners," among them Fidelity Investments and Massachusetts General Hospital, won't keep supporting Year Up, Chertavian knows, if the young people he sends them don't perform. Consequently, half the training in the yearlong program—six months in class, six months on the job but still supervised—amounts to what Chertavian calls "ABC": attitude, behavior, and communications.

No one can dispute Year Up's success. Though not many graduates have started businesses, nearly 90 percent of them are working—the group keeps close track of its charges—and they make an average wage of $14.71 per hour (usually at the employers where they first did Year Up internships). This achievement is all the more impressive at a time when the Labor Department reports that 40 percent of black and Hispanic youths are unemployed.

Nonprofits in this mold have been opening their doors all across the country over the last decade. Take the Oakland-based First Place Fund for Youth, for example. Like other social entrepreneurs, First Place talks left, promising to prevent "homelessness" among foster children who, at 18, have "aged out" of foster care. But providing them with housing is only one element of a demanding program to prepare these young people to live as independent adults. University of Chicago grad Amy Lemley became inspired to start First Place after working in government-supported or -run group foster-care homes that turned kids out at 18 "with not much more than a plastic garbage bag filled with their clothes," she says. Starting in 1998 with funds from a circle of friends, Lemley envisioned an *in loco parentis*–style program for "emancipated" foster children (70 percent of them African American).

First Place, again like other social entrepreneurs, is picky about whom it aids, and it demands responsible behavior in return. Before participants can qualify for the program's chief benefit—an apartment shared with other former foster children—they must complete an eight-week "economic literacy program." And they must not miss class. "This is a screen we use to assess who is ready to take on the responsibilities of the program," observes program cofounder Deanne Pearn.

Those accepted will receive housing—in private apartments with roommates—for up to two years, but the benefit comes with lots of strings attached. Participants get loans, not grants, for their initial housing costs, such as furnishings, and must pay them back. Every month, they'll pay a greater share of the rent from their own earnings until, by the time they complete the program, they're paying the full amount. Nor is keeping up with the rent enough to stay in the program. Each month, they're evaluated on eight "behavior criteria"—holding jobs, continuing education, even the cleanliness of their apartments. Like Year Up, First Place Fund isn't afraid to flunk participants—some 40 of 400 have had to leave. And First Place has plans to expand regionally—although it also hopes to inspire and advise others who might start similar enterprises nationally.

In the same spirit is College Summit, founded in 1993, which helps low-income and mostly minority high school students get into college. Notwithstanding "diversity"-themed promotional material that might make you think it an advocate for affirmative action or other group-based redress, College Summit focuses squarely on individual improvement. It uses intensive four-day workshops, held on college campuses, to teach students how to write effective college application essays and how to use those same skills during senior year in high school. It gives the kids ongoing guidance during senior year. The instructional tone in the workshops is always serious: "The successful personal essay," participants hear, "oscillates between two poles—the purely autobiographical and the universal."

Like Year Up, College Summit is selective about whom it helps. A typical workshop brings together students who've earned at least "mid-tier" grades, and whose extracurricular activities suggest that they can do "better than their numbers." In addition to the academics, College Summit encourages its participants to adopt the middle-class ethic of planning for the future and taking the steps needed to realize those plans. "I learned," says one student, "that my approach

College Summit motivates low-income kids to apply to college and helps them get in.

JOEL HASKELL

to life needs to be like doing a math problem; success is only achieved by taking many small steps."

The driving force behind College Summit is J. B. Schramm, a Yale alum with a Harvard Divinity degree. As a youth worker in a Washington, D.C., housing project's recreation center in the early 1990s, Schramm grew frustrated meeting so many smart kids with no plans to continue their education. College Summit is his response: some 79 percent of the group's 5,000 participants have gone on to college, compared with 46 percent for high school grads from similar income groups. Now operating in 14 states, the organization has persuaded five public school systems to pay it $1.5 million a year—about 20 percent of its total budget—in exchange for work that it does not only with students but also with teachers, who get training in "college application management."

Schramm aims to go beyond college admissions to "change the anti-college culture of a school or community" where low-income black and Hispanic students are the majority by forging his participants into a group of influential, academically ambitious "peer leaders." "The power of that individual who has made a personal decision to see themselves in a new way," says Schramm, "is far greater than an external celebrity telling the kids to stay in school."

Schramm's next challenge is to raise his participants' college graduation rate, which, while above the 32 percent national rate for black college kids, is nevertheless below the 54 percent rate for all students. Schramm plans workshops to prepare kids to deal with the usual setbacks and frustrations they'll meet in college. He'll also steer participants to institutions where College Summit students have a high graduation rate, and he'll set up support groups at such places to help his kids succeed.

As with other groups in the movement, Upwardly Global, a San Francisco–based immigrant-assistance organization, sends some culturally left-liberal signals. Its literature, for example, approvingly quotes Chilean writer Isabel Allende: "Often immigrants and refugees are exiled from the mainstream workforce." Upwardly Global's goal, however, isn't grievance mongering. It seeks to provide immigrant professionals with the tools for upward mobility in America. Founder Jane Leu, with a master's in international affairs from Columbia, started "UpGlo" out of exasperation with refugee resettlement programs run by church-based nonprofits (usually financed by the federal government). She found that many newcomers with marketable skills and university degrees wound up in menial positions and didn't understand the American workplace style well enough to advance. "It made me determined that as a society we could do better at integrating newcomers," she says.

Instead of trying to use litigation or legislation to protect immigrants from discrimination, she would seek to make immigrants themselves more acceptable to the workplace. In her Market Street office, an amazing range of new Americans—from Eastern Europe, Africa, Latin America, the Middle East—sit together in a conference room, in the shadow of an American flag, to learn how to craft a punchy resumé and sell themselves in job interviews. Marketing oneself, says Leu, is foreign to many cultures, where it's thought immodest. Leu tells her charges to get over that. Her clients—like the Think Detroit kids, who must shell out to pay for uniforms, and get to the games on their own—must pay an enrollment fee to get UpGlo's services.

Those services include inside access to dozens of companies that have agreed to interview UpGlo participants (the firms help support the organization financially). To date, its numbers served are small: in its first three years (2001–04), 228 jobseekers from 58 countries. But the success stories are powerful. Bijana was an advertising account manager in the former Yugoslavia who'd been stuck doing temp work in the U.S. until UpGlo helped her get a job as an international account executive for the advertising firm McCann-Erickson. Daria, a onetime television journalist from Mongolia, landed a position as production assistant for KPIX-TV, San Francisco, after she'd been waitressing in a coffee shop. Florin, a medical doctor from Rumania, had been clerking in a hardware store. With UpGlo's

COURTESY OF FIRST PLACE FUND

U-HAUL
RIGHT EQUIP
RENTAL OFFICE
Van

First Place Fund for Youth makes sure that at 18, foster kids don't graduate into homelessness but learn life skills.

assistance, he became a medical resident at the Kern Medical Center in Bakersfield. Joined by volunteers from the Stanford Business School, Leu plans to expand—first to New York and Miami, and then, she hopes, across the country.

Even internationally, the social entrepreneurship movement represents a revolt against old-style welfare-state leftist orthodoxies. No single social entrepreneur is more widely lionized than Muhammad Yunus, an American-trained Bangladeshi economist who in 1976 founded the Grameen Bank, a philanthropically capitalized enterprise that extends credit to the rural poor of Bangladesh engaged in very small businesses. From its roots in a single village, Grameen has gone on to make some 5 million loans to struggling Third World capitalists. This "microfinancing" has proven to be a much more effective method of developing poor countries than shoveling U.S. foreign-aid money to their corrupt governing elites, who've squandered billions. At the same time, the bank strives to break even financially and to encourage its rural poor clientele to adopt habits of cleanliness and the goal of education.

The open question about the social entrepreneurship movement here in the U.S. is how big a role it ultimately can play. Older liberal foundations won't give the social entrepreneurs the time of day, because, despite their liberal rhetoric, they're not interested in the "social change" that the Ford Foundation and its brethren still promote. But by drawing on the aid of "venture philanthropists" like Echoing Green (or the Skoll Foundation, or New Profit Inc., or Gap founder Don Fisher) and their own capacity to generate revenue, the social entrepreneurs are already showing Americans that government is neither the only means, nor the best, to help those in need. ▪

Urbanities

Was Liberalism's Philosopher-in-Chief a Conservative?

Michael Knox Beran

The puzzling contradictions of Isaiah Berlin

Sir Isaiah (pronounced aye-ZYE-ah) Berlin, who died in 1997 at 88, was one of the last century's notable talkers. "One was startled from the beginning," Arthur Schlesinger said, "by the glittering rush of words and wit, the dazzling command of ideas, the graceful and unforced erudition, the penetrating assessments of personalities, the passion for music, the talent for merriment and, most remarkable of all, the generosity of spirit that led him to treat all of us as his intellectual equals. He had the exciting quality of *intensifying* life so that one perceived more and thought more and understood more."

Such exuberance opened doors; Berlin's ascent began early. Eleven years after arriving in England as a refugee from the Russian Revolution (the 12-year-old spoke scarcely a word of English), "Shaya" was elected a fellow of Oxford's All Souls College, the intellectual pinnacle of the realm. When, in 1957, he received his knighthood, a friend, contemplating the slenderness of his œuvre, said that it must have been bestowed in recognition of his services to conversation.

Margaret Thatcher used to chide Berlin for his idleness. "Whenever they met," Michael Ignatieff wrote in his 1998 biography, "she would ask him what he was working on and when he replied not very much, she would shake her finger at him in mock reproach: 'You must work, Isaiah, you must work.' 'Yes, madam,' he would dutifully reply." Yet he was less of a dilettante than he seemed. When, in the 1970s, the Oxford University Press began reissuing essays that Berlin had published over the years in sometimes obscure venues, it became clear that the man who always called himself a reluctant writer had managed, almost unwittingly, to illuminate searchingly the ways in which people devote themselves to a principle, a vision of life, as well as to propound a theory that undermined the whole notion of *living* a principled life. A puzzle, evidently—though not a purely academic one: Berlin's thinking had consequences beyond the Gothic towers of Oxford, not all of them benign.

Berlin's essay "Winston Churchill in 1940" is his best-known account of how a man finds an ideal and lives up to it. It starts by painting the period after the First World War, in which the mature Churchill lived and worked—the age of "bitter disillusion," when Lytton Strachey, Bertrand Russell, and the rest of Bloomsbury set out to expose the hollowness, the "false splendours," of the ideals of the preceding generations. Churchill was himself an object of the scoffers' ridicule. His rhetoric, the detractors said, was "false" because it was "artificial," the product of a contrived and anachronistic view of the world, a series of risible clichés ("King and Country," the "Righteous Cause" of liberty), so much "tinsel and hollow pasteboard."

Berlin allowed that there might have been an element of self-deception in Churchill's "grand style," but it was, he believed, a "necessary illusion." It enabled Churchill to inspire his people at a time when they badly needed inspiration. Such an imagination as Churchill's, Berlin said, "fuses hitherto isolated beliefs, insights, mental habits, into strongly unified systems. These, if they are filled with sufficient energy and force of will—and, it may be added, fantasy, which is less frightened by the facts and creates

Sir Isaiah Berlin as Chichele Professor of Social and Political Theory at Oxford in 1992

BASSOULS SOPHIE/CORBIS SYGMA

ideal models in terms of which the facts are ordered in the mind—sometimes transform the outlook of an entire people and generation."

In other words, Churchill had principles, and he knew how to make them compelling. Churchill's vision of the conflict between English liberty and National Socialist despotism was, Berlin said, "heroic, highly coloured, sometimes over-simple and even naïve." But it was never false; it was always a "genuine vision," however much it differed from the prosaic outlooks of those around him. Berlin noted how Churchill, commenting on a 1940 Foreign Office draft, said that its ideas seemed to him "to err in trying to be too clever, to enter into refinements of policy unsuited to the tragic simplicity and grandeur of the times and the issues at stake." Churchill "created a heroic mood and turned the fortunes of the Battle of Britain," Berlin argued, "not by catching the mood of his surroundings . . . but by being stubbornly impervious to it." Through his rhetoric, he "idealized" his fellow citizens "with such intensity that in the end they approached his ideal and began to see themselves as he saw them."

A tour de force, "Winston Churchill in 1940" revealed Berlin's ability to enter into other people's minds and understand how they formulate and refine their principles. This faculty—his hero, the Neapolitan sage Giambattista Vico, called it *fantasia*, a "depth of imaginative insight that characterizes gifted novelists"—was Berlin's greatest strength. He brought the buried mental processes to life by means of psychological insight, intellectual empathy, and literary skill. His studies of Leo Tolstoy and Benjamin Disraeli, Moses Hess and Chaim Weizmann, Boris Pasternak and Anna Akhmatova, are in the tradition not of the twentieth-century psychologists, with their ambition to strip their subjects of their dignity, but of the literary essayists of the nineteenth century. Berlin was himself a mandarin, and at its best his style enabled him, as he held his jewels up to the light, to capture their various glints and flashes.

How disappointing, beside these profiles in principled idealism, are Berlin's ostensibly more ambitious essays on liberty and pluralism. Take "Two Concepts of Liberty," Berlin's 1958 inaugural lecture as Chichele Professor of Social and Political Theory at Oxford. Many in the audience inclined to a donnish Menshevism, and Berlin, who was not a Marxist, was wary. His lecture was not precisely the "ringing manifesto" for "individual freedom" that some have claimed it to be. He was searching—cautiously—for a way to prevent liberal purists in the tradition of "Jefferson, Burke, Paine, Mill" (he calls this, with a touch of academic pomposity, the tradition of "negative" liberty) from coming to blows with advocates of what he calls "positive" liberty.

With much huffing and puffing, Berlin demonstrated that "positive" liberty is often associated with tyranny. The advocate of "positive" liberty believes that human beings, if they are to achieve true freedom, must be liberated (by force if necessary) from the restraints of their lower selves. "Positive" liberty has appeared in many guises, but Berlin was most concerned with the variety that in the twentieth century piled up so many corpses, the social philosophy that descends from Hegel and Marx. He believed that it was folly for liberals, in their struggle with the proselytes of "positive" liberty, to insist, as Churchill did in his struggle with National Socialism, that their own "negative" liberty was a "sacred, untouchable value." They must learn the virtues of accommodation. A "practical compromise," Berlin said, "has to be found."

In fact, the "practical compromise"—the welfare state—had already been found. But the legitimacy of this originally German concept remained questionable in England and America. Friedrich Hayek, among others, demonstrated that liberal collectivism necessitated sacrifices of individual liberty that would have appalled Jefferson and Macaulay. It was in order to justify these sacrifices and at the same time to preserve "a measure of 'negative' liberty" that Berlin set forth, after much beating around various learned bushes, his theory of the "pluralism of values."

In George Orwell's *Animal Farm,* unscrupulous pigs are the agents of evil. In the pluralist mythology of Berlin, the hedgehog is the villain. Unlike the fox, who, the Greek poet Archilochus said, "knows many things," the hedgehog knows "one big thing." For Berlin, it is man's hedgehog-like pursuit of "one big thing"—a "good," a "value," a "Platonic ideal"—that is continually getting him into trouble.

This contempt for the hedgehog Berlin expressed most memorably in the lecture "The Pursuit of the Ideal," which he delivered upon accepting the Agnelli Prize in 1988. Gathered in the Turin opera house (where the orchestra played selections from Beethoven and Tchaikovsky) were many notables; Fiat heir Giovanni Agnelli amused Berlin by saying that he would relieve the tedium of the proceedings by revolving in his mind images of the beautiful women he had known—an undertaking, he boasted, that might easily consume an hour. The lecture Berlin delivered, after the last strains of the *Emperor* concerto faded away, was at once his pluralist testament and his intellectual autobiography—the most candid of his essays, his account of how his own pursuit of the ideal led him to recognize that the unequivocal embrace of *any* ideal is a form of "self-induced myopia."

"Happy are those," he proclaimed, "who live under a [hedgehog-inspired] discipline which they accept without question, who freely obey the orders of leaders, spiritual or temporal, whose word is fully accepted as unbreakable law; or those who have, by their own methods, arrived at clear and unshakeable convictions about what to do and what to be that brook no possible doubt. I can only say that those who rest on such comfortable beds of dogma are victims of self-induced myopia, blinkers that may make for contentment, but not for understanding of what it is to be human."

Though Berlin's pluralist writings are not free from ambiguity, two things are clear. First, his approach to ideals and principles resembled Agnelli's approach to women. In a universe abounding in attractive goods, one must glory in diversity and resist the singularity of the hedgehog, who attaches too much value to particular manifestations of beauty and virtue. Whether Platonist or Christian, socialist or liberal, the hedgehog has purchased peace of mind by surrendering to some (perhaps virtuous) lie.

Second, Berlin's pluralist universe is like a fable of Borges, a puzzle that admits of no solution; its goods form no harmonious pattern, no "perfect whole." They "clash" and cancel one another out. "Both liberty and equality are among the primary goals pursued by human beings through many centuries," he argued, "but total liberty for the wolves is death to the lambs, total liberty of the powerful, the gifted, is not compatible with the rights to a decent existence of the weak and the less gifted . . . . Equality may demand the restraint of the liberty of those who wish to dominate; liberty—without some modicum of which there is no choice and therefore no possibility of remaining human as we understand the word—may have to be curtailed in order to make room for social welfare, to feed the hungry, to clothe the naked, to shelter the homeless, to leave room for the liberty of others, to allow justice or fairness to be exercised. . . . Some among the Great Goods cannot live together. . . . We are doomed to choose, and every choice may entail an irreparable loss."

In the Berlinian mythology, the weak soul seeks refuge from the *Sturm und Drang* of colliding ideals—attempts, like the hedgehog, to escape the danger by rolling himself into a ball. But he does this at the expense of his humanity, for "collisions of values are the essence of what we are," both collectively, as peoples and nations, and as individuals.

Berlin conceded that individuals and nations must sometimes follow the hedgehog, must choose particular goods and reject others. No person or nation can encompass every good, and not all goods are compatible. The number of values one can embrace, Berlin said, "is finite—let us say 74, or perhaps 122, or 26, but finite, whatever it may be." We are "doomed to choose," and every choice is potentially tragic, because it entails a retreat from the humanity of doubt and because it may involve the renunciation of other, equally valuable but antithetical goods. In embracing the good of homeland security, for example, a nation may be forced to curtail personal liberty. An individual, "in order to create a masterpiece," may, Berlin wrote, "lead a life which plunges his family into misery."

The weakness of Berlin's picture begins with the relentless abstraction in which he presented the dilemma that chiefly perplexed him—the collision of liberalism and socialism. This concrete historical crisis he painted in a language shot through with metaphysical ambiguity. His portrait of man as a chooser of values is as unpersuasive a philosopher's ghost as Rousseau's Natural Man or the Economic Man of the classical political economists. The descendant of the bloodless, ethereal concept of Man of the eighteenth-century philosophers, Berlin's value-choosing agent is helpless in the face of clashing ideals because he comes to his choices, as no actual human being does, morally naked. The actual human being brings to his choices a moral history, a pattern of impressions and experiences, of sentiments and ideals, that have been conditioned by religion or vestiges of religious tradition, by the wisdom embodied in customs and manners, by the moral insights transmitted by poetry or art or education, by the truths of our nature. In working up his picture of the anxiety of the choice-maker in the face of competing ideals, Berlin lost sight of the fact that the actual human being comes to his choices furnished with what Edmund Burke called "the wardrobe of a moral imagination," one that, even in its dressed-down forms, makes some choices almost impossible and others all but inevitable.

Just as misleading is the paper dilemma that Berlin conjures with his metaphysical oppositions between "total liberty" and "a decent existence," between submissive "sheep" and "those who wish to dominate." It's an odd way to describe the conflict between liberal and socialist ideals that Berlin sought to compromise. His "total liberty for the wolves" is a contrived bogeyman, a fabulous nightmare in which Bronze Age beasts sprung from the pages of Nietzsche have been converted to the laissez-faire tenets of the Manchester School. Odd, too, that Berlin should have made liberalism (or libertarianism) the bloody creed, when a body count would doubtless give that palm to the social justice communitarians.

But however distorted his description of the alternatives that the West confronts, it enabled Berlin to portray the value-pluralist welfare state as a crucial bulwark, all that stands between reasonable people and fanatic hedgehogs. Take away the day-care centers and the dole, Berlin implied, and tragedy is inevitable. Militant socialists will march investment bankers off to the gulag, and libertarian fascists will bludgeon welfare mothers with copies of *The Wealth of Nations*.

It is philosophical inflation to describe this split-the-difference philosophy, as Berlin did, in the language of tragedy, of "doom" and "irreparable loss." His morbidity is manufactured and, moreover, false to his own essentially happy temperament. Of course, by associating value-pluralism with the dark splendor of *Oedipus* and *Macbeth*, Berlin hoped to conceal the thinness that a philosophy of mere compromise is bound to possess. He sought, too, to endow value-pluralism with a portentous air of inevitability, thereby discounting other resources against fanaticism. Not only did Berlin slight Burke's "moral imagination"—a faculty that operates as a restraint, however imperfect, on all those who have not abjured it: he also undervalued the procedural protections against monomaniacal tyranny found in the older pluralism that descends from John Locke and James Madison, safeguards that protect disparate ideals and at the same time prevent any one of them from exerting dominance.

In his effort to make value-pluralism into something more than an *ad hoc* theory devised to meet the demands of a particular historical moment (the twentieth-century collision of Marx and Madison) and to justify a particular political settlement (the welfare state), Berlin attempted to endow it with the prestige of universality. Liberty and social justice, he argued, are not the only irreconcilable ideals that force us to make tragic choices. He pointed to the incompatible aspirations of different civilizations and their rival conceptions of human potential. If I would be Pericles, I cannot be Saint Bernard. If I would be Rockefeller, I cannot be Alcibiades. In dwelling on these antagonistic ideals, Berlin only grudgingly (and rarely) conceded that "there is a great deal of broad agreement among people in different societies over long stretches of time about what is right and wrong, good and evil."

The emotions underlying Berlin's value-pluralism—the love of fox-like compromises, the horror of the hedgehog's principled idealism—grew in part out of his own experience. As a Jew born in the Baltic, raised in England, and educated at Oxford, Berlin inhabited multiple and incongruous homes—comfortably, but always with a trace of a barrier. He felt himself fully a Jew and had no desire to belong to what he called the "Order of Trembling Amateur Gentiles," yet he was cut off from certain aspects of Jewish culture and was himself an amateur in the spiritual traditions of his people. His relations with his father, a timber merchant, were marked, in later years, by a strain of mutual incomprehension. "As for the Jews," Berlin told Felix Frankfurter after a visit to Palestine in 1934, "they are most odd and fascinating, and I felt equally uneasy with them and away from them, like relations one hasn't seen for 30 years or something, to whom one knows one is, even feels, related, but whom one doesn't really know."

He was an Englishman, Sir Isaiah Berlin, O.M., Oxford don, pillar of the realm, at home in the Georgian splendor of Headington House, his Oxford residence, and in his rooms in "Albany," the posh London flats; but however high he rose, he knew that, like Disraeli before him, he would always be at best an exotic in that Anglo-Saxon kingdom. Nor were the Christian traditions central to British culture sympathetic to him. (Visiting a Shinto shrine, Berlin declared that he could worship "any god except the Christian God.") His life was an exercise in "incommensurable values."

Berlin hesitated to commit himself beyond his initial attachments to his family, to an abridged version of his hereditary tradition, to Oxford, and to England—bonds formed before he was 20. For years he lived the celibate life of an old-fashioned don. He enjoyed vicarious glimpses into other people's lives—he was devoted to gossip, and socialized, Columbia's Steven Marcus said, "to the point of addiction"—but for a long time he suffered no one to come too close. Eros he submitted to late, at 41, when, according to his biographer, he began "adult sexual life." Six years later he married. He developed an intense loyalty to Zionism and later to Israel, but he politely turned away when Chaim Weizmann urged him to remain with him and avoid the fate of Justice Frankfurter, who, Weizmann complained to Berlin, "sits there among those Gentiles, seven days a week. How can he? What is he doing?"

Yet it was not Berlin's wariness of attachment alone that led him to dwell so lugubriously on all that one loses in committing oneself to an ideal, and to pass rapidly over all that one gains. There is another reason why he made Keats's "negative capability" (a man's capacity to be "in uncertainties, mysteries, doubts," to feel there "is nothing stable in the world. . . . Uproar's your only music") the master principle of pluralism. Berlin had, as a boy living in Saint Petersburg, watched a collision of ideals degenerate into bloodshed. He had seen a czarist policeman, in the last paroxysm of fear, hurried to his death; and he had been present when the Cheka raided his family home. Later, after he emigrated to England, he learned that his uncle had been tortured by Stalin's agents. The boy who had seen the Russian Revolution with his own eyes was all his life to worry that the smallest surrender of the humility of doubt, the slightest acquiescence in the arrogance of certitude, could put a man on the road to hedgehogism, which was for Berlin "almost always the road to inhumanity."

The world has changed since Berlin, taking up his Oxford professorship, declared that value-pluralism might yet save humanity from its "craving" for the "certainties of childhood" and the "absolute values" of the "primitive past." But for many liberals, it is still 1958 and value-pluralism the bright new idea. Berlin's theory, devised in the Sputnik era to justify a welfare state that has since been partially dismantled, has become entrenched in modern liberalism and has weakened society's defenses against the kinds of moral and political tragedy that Berlin himself dreaded.

The most obvious casualty of contemporary value-pluralism is the pluralism it superseded, the pluralism of John Locke and James Madison. The older pluralism was in part procedural; it emerged in the aftermath of the Reformation, when the West puzzled over how to keep people of different religions from killing one another. Locke's answer was to tolerate different religious beliefs, a then-novel idea enshrined in the Toleration Act, a pillar of the Whig settlement worked out after Britain's Glorious Revolution in 1688. During the drafting and ratification of the U.S. Constitution a century later, James Madison elaborated a more sophisticated theory of pluralism. A nation's interests and factions could be made, by an ingenious constitutional machinery, to check and balance one another. Edmund Burke and Alexis de Tocqueville, studying France's revolution, saw another justification for pluralism. The various groups—the little platoons—that make up civil society act collectively as a salutary check on the power of an aggrandizing government and are for that reason a valuable element in the state.

Old-fashioned pluralists sought to protect dissenters, minorities, and unpopular points of view. They never attempted to discredit mainstream moral traditions and popular creeds. On the contrary, they believed that these were necessary to the preservation of ordered liberty. By contrast, modern value-pluralism has prompted government to accord second-class status to traditional and popular forms of belief as part of its effort to promote the value-pluralist ideal of diversity. In the 1970s and 1980s, the Supreme Court began invoking a version of value-pluralism in deciding religious-freedom, freedom-of-speech, and "alternative-lifestyle" cases. Under the new standard, the values of minority groups that embody an *épater les bourgeois* spirit must be not simply tolerated but accorded a privileged status, for such contrarian opinions counteract the influence of the dominant hedgehogs. By the same token, a system of belief that commands the *assent* of a large body of citizens is under the new pluralist standard suspect; however tolerant it appears, such a creed may lead to tyranny.

The double standard is apparent in the 1996 *Romer* v. *Evans* case, in which the Court struck down an amendment to Colorado's constitution that prohibited the creation of special rights (beyond those which all citizens enjoy) for homosexuals. In his dissent in *Romer*, Justice Scalia argued that the Court, forsaking its role as neutral umpire in a pluralist society, had chosen "to take sides" in a "culture war" and impose upon the nation values "favored by the elite class from which the Members of this institution [the Court itself] are selected." The old standard of "equal protection of the laws" was being superseded, Scalia maintained, by a "novel and extravagant constitutional doctrine" of "*preferential* treatment under the laws" for views at odds with "traditional American values."

Under the new pluralist standard, it is lawful to burn an American flag on the town-hall steps, for flag burning is respectable in the eyes only of a small number of citizens, while it is unlawful to reserve a moment for silent prayer in the public school. School prayer does not, even remotely, amount to a constitutionally prohibited "establishment" of religion, but it stands for a sentiment embraced by the majority of Americans and is for that reason, under a value-pluralist analysis, a danger to the republic. Value-pluralism, as applied by the courts, has ceased to be a machinery of impartial arbitration and has become what Berlin never intended it to be: a dogmatic, discriminating creed in its own right, one that delegitimates the mainstream beliefs that have shaped the American moral imagination. We may, as Justice Sandra Day O'Connor has opined, "live in a pluralistic society," but for the value-pluralist, some values are more equal than others.

If value-pluralism has debauched the courts, its effect on the welfare state has been still more demoralizing. Berlin saw the welfare state as the one system able to mediate between (what he considered to be) the incompatible ideals of liberty and fairness. His hope lay in the welfare state's bureaucratic blandness. Welfare-state liberals traced their inspiration to the technocratic reformers of the early twentieth century, who were convinced that the progress of society depended on the administrative capabilities of what the young Walter Lippmann called a "specialized class" of experts and social engineers, armed with the insights of social science and clinical psychology. Berlin, with his humanist inclinations, could not personally have found this technocratic utopianism appealing; yet the very dullness of the welfare state's credo, he seems to have thought, was a recommendation. The stolidity of the bureaucracy would forestall the impulse to extremism or revolution, whether on the Left or the Right.

If the welfare state was useful to value-pluralism, value-pluralism was as useful to the welfare state. In the 1940s and 1950s, the faith in scientific planning that had originally inspired welfare-state liberals began to fade. In *The End of Reform,* Alan Brinkley observed that during the last years of FDR's rule, many New Dealers became disenchanted with the "statist planning" that had once been their hope. In the postwar years, it became evident that the rule of the experts had produced not Herbert Croly's New Republic or Graham Wallas's Great Society but the spiritual poverty of the welfare office, with its whiff of Lysol and futility. Value-pluralism supplied welfare-state liberals with a fresh justification for what remained of their progressive dream—their antipathy to the middle-class conventions that stifle, to the Pleistocene morality that prevailed before the advent of the social worker, the guidance counselor, and the clinical psychologist. In the 1960s, value-pluralist liberals began to use welfare-state programs to cut the tie between mainstream behavioral norms (such as hard work and self-discipline) and the material rewards of a good life. When, in the 1980s, Margaret Thatcher advocated a return to the "Victorian virtues," value-pluralists committed to a morally neutral welfare state denounced her fiercely.

Corrosive, too, has been the influence of value-pluralism in schools. One of the fruits of Berlin's philosophy is multiculturalism, whose defenders have used the Berlinian notion of a universe of "incommensurable values" to extirpate the weed of "Eurocentric" or "dead white male" civilization. For the multiculturalist, all values are equal, except those of the West. It's a radical-chic version of the Oxford skepticism that underlay Berlin's own value-pluralism ("nothing new or true,—and no matter," as Emerson characterized it). Though Berlin was wary of the multicultural movement, its apologists justifiably regard him as a patron saint: they are faithful to the central aspiration of the value-pluralist philosophy, a world in which no principle is taken too seriously.

Berlin always maintained that value-pluralism "is not relativism." But his multicultural heirs might be forgiven for supposing that one of his objects was to make it harder for people to say that some ideals are true and others false, some good and others evil. Evil, for the value-pluralist, is the consequence of a too-passionate idealism; it results when hedgehogs push a particular value too far, as Germany's National Socialists did when they took an end that was not in itself objectionable—the cohesiveness of the national community—and transformed it into something perverse, the ideal of German racial superiority. Thus Berlin can speak, bizarrely and disconcertingly, of "Nazi values."

Toward the end of "The Pursuit of the Ideal," Berlin apologized for the absence in his philosophy of a visionary gleam—a flash of poetry, of moral splendor. Value-pluralism was, he conceded, a "little dull as a solution," a "very flat answer, not the kind of thing that the idealistic young would wish, if need be, to fight and suffer for, in the cause of a new and nobler society."

To be sure, the great difficulty with pluralism, in both its old (Madisonian) and new (Berlinian) incarnations, is that it offers the heart so little. The old pluralism is pragmatic, procedural, a machine for impartial arbitration. The new value-pluralism is avowedly hostile to the old inspirational traditions. Both pluralisms appeal only to reason, not to the imagination. As such, they share what John Stuart Mill and Lionel Trilling diagnosed as liberalism's greatest weakness: its tendency to "envisage the world" in a "prosaic" way.

Abraham Lincoln understood the problem and offered a solution familiar to Americans. In an 1838 essay, he argued that, unless America's republican institutions could inspire a more visceral sense of nationhood, they might perish from civic apathy. To "fortify" the republic against such a decline in public spirit, Lincoln proposed the development of public myths and rituals, a "*political religion* of the nation."

A quarter of a century later, in the midst of his country's great crisis, Lincoln confronted the problem again. He did not attempt to create a "political religion of the nation" *de novo* but rather sought to ally the brilliant pluralist system of America's Enlightenment Founding Fathers with the country's original Puritan spiritual inspirations. The residue of these older credos, even in an age of iron and steam, possessed a power of mystic apprehension that Lincoln believed could awaken the spirit of his people by giving them a nobler conception of the meaning and destiny of their republic.

It was not a rhetorical conjuring trick; Lincoln reverted to the language of the King James Bible because it spoke of something eternal in the human condition—of the way men find their way through confusion and suffering to truth. The Civil War was an agonizing struggle to vindicate a truth about the value of freedom. If slavery is not wrong, Lincoln said, nothing is wrong. The Union was worth fighting for—was worth dying for—because it was founded on the "self-evident truth" that men are not created slaves. They "are created equal." America, Lincoln said, was "dedicated" to this proposition. No fox-like reservations for him; to such an ideal men might offer up the "last full measure of devotion" and in its name might "consecrate" the soil with their blood.

Of course, evil may corrupt the loftiest idealism. Pericles, Thucydides wrote, said that Athens embodied so beautiful an ideal of greatness that her citizens became her "lovers." The image is enchanting, yet it foreshadows the arrogance that would bring the city low. Berlin, taking such cautionary examples to heart, argued that because *some* idealisms have degenerated into violence and evil, we ought to regard *all* idealisms with the deepest suspicion. Trouble is, this position has obliged a generation of liberal pluralists to keep not only Hitler and Lenin, but also Lincoln and Churchill, at arm's length. It has forced them to speak of their own convictions, insofar as they dare to *have* convictions, in a tone of embarrassed apology; has forced them to speak dismissively of their civilization's virtues; and has forced them to throw up their hands and say that everything is really very complicated and that all one can do is refrain from being too enthusiastic, too certain, too free from doubt. They fail to see that prudence has its own forms of zeal, and understatement its own blindnesses and stupidities. The cautious, agnostic, equivocal virtues (of a Neville Chamberlain, say) have led not less often to disaster than the heroic and forthright ones.

Urbanities

Value-pluralism—praised by its present-day apologists, in their dreadful jargon, as a theory that fosters a "zone within which individuals will freely associate to pursue shared purposes and express distinctive identities, creating a dense network of human connections called civil society"—is undoubtedly a flawed philosophy, a formula for the pasteurization of the human spirit. But Berlin himself remains an appealing figure. He possesses the power of his contradictions. The different personas emerged, one after another, in the flood of talk for which he was celebrated. At one moment he was the Jewish *chacham*, the scholar of gifts from whom great things were expected, expectations that proved to be a burden. Now again he was the convivial Oxford don, delighting in high-table tittle-tattle about the great world. Next he was the acutely perceptive Russian psychologist, possessed of an insight into the soul that enabled him to function at All Souls as a churchless abbé, a father-confessor who shrived the suppliants who came to his rooms.

At other times, he was a searcher, pursuing, like Pierre in *War and Peace*, a solution to the enigma of life. His quest was more methodical than most. Berlin's writings are a catalog, at times a laundry list, of the various answers that philosophers have proposed, not only the great figures but also the more obscure sages, Campanella and Nicholas of Cusa, Festugière and Mandelberg-Posadovsky, ghostly intelligences roused by Berlin from their slumber in dusty libraries. The cacophony of competing solutions is painful: Berlin spoke a "Babel of voices," a "monstrous muddle," and the reader of his essays feels as though he has entered the philosophical Hell of Milton, where the demonic sages "reason'd high,"

> *And found no end, in*
> *wandring mazes lost. . . .*
> *Vain wisdom all, and*
> *false philosophie.*

Where so many others had failed to find a persuasive Answer, it was, Berlin concluded, futile to make yet another attempt, to add another flawed theory to philosophy's ash heap. And so he proclaimed his anti-Answer—value-pluralism, his theory that there is no Answer. Yet he never bothered even to paper over value-pluralism's ambiguities, to endow it with a merely verbal coherence, to make it the subject of the Big Book that he was expected to write but never did. Life was too amusing to devote to such labors.

Berlin preferred instead to investigate philosophies that possessed those qualities value-pluralism did not. In *The Magus of the North*, he described the German mystic Johann Georg Hamann's critique of the French Enlightenment in terms reminiscent of Lionel Trilling's critique of liberalism. Hamann, Berlin wrote, despised the ideals of such philosophes as Helvétius: they did "not delve into the depths and splendours of the ravaged human soul. . . . In a world built by Helvétius there would be no colour, no novelty, no thunder or lightning, no agony or transfiguration." Berlin's best work, in fact, concerns the insights into the human condition of thinkers antipathetic to the liberal tradition—Hamann and the German Romantics, Tolstoy and Disraeli, Machiavelli and Sorel. He wrote little on liberal *minds* (as distinct from liberal theories): there is an essay on Mill, a piece of puffery about FDR, a eulogy of Felix Frankfurter, not much more. The liberal mind seems not to have interested him very much.

By contrast, the Catholic reactionary Joseph de Maistre intrigued him, captivated him. Maistre occupies a special place in Berlin's imagination, akin to that which Samuel Taylor Coleridge filled in the thought of John Stuart Mill. Though recoiling from Coleridge's conclusions, Mill profited from his encounter with a philosopher who "saw so much farther into the complexities of the human intellect and human feelings" than liberal-utilitarians like Jeremy Bentham. Berlin similarly drew back from Maistre's "violent" mind, but he found him "bolder, more interesting, more original" than any political thinker of his age, including Burke. Maistre, in Berlin's account, is "penetrating and remarkably modern," "vigorous, brilliant, original and amusing," a "ferocious critic," "icy, smooth, clear." His thought is "dry light against the flickering flame," conveyed in language that rises to "classical dignity and beauty." His insights are "passionate but lucid," "bold and penetrating," "exceedingly pungent," "unique" in their "grasp," similar to but "far more powerful" than Burke's. Beside Maistre, Rousseau and Hugo are "turbid" and "gushing," Flaubert "an imperfectly drained marsh."

For Berlin, Maistre's "genius consists in the depth and accuracy of his insight into the darker, less regarded, but decisive factors in social and political behaviour." Maistre was "an original thinker, swimming against the current of his time, determined to explode the most sacrosanct platitudes and pious formulas of his liberal contemporaries." Maistre conducted his attack on liberalism "with much exaggeration and perverse delight," yet also "with some truth," for the Savoyard thinker perceived, as liberals did not, "the persistence and extent of irrational instinct, the power of faith, the force of blind tradition." Maistre showed, as few others have, "the willful ignorance about their human material of the progressives—the idealistic social scientists, the bold political and economic planners, the passionate believers in technocracy." Maistre understood, as liberals and progressives did not, "the impalpable strands which hold societies together and give them their strength." He knew, as they did not, that "societies have a general soul, a true moral unity, by which they are shaped" and that a government, if it is to retain its hold on its citizens, must have "its dogmas, its mysteries, its priests."

Maistre saw, as the liberals did not see, the "unexplained and unexplainable depths." He felt, as they did not feel, the "dark unanalysable . . . poetry of the world." He fathomed, as they never could, man's infinite capacity for self-destruction, apparent at once in his desire to exalt and to abase himself, to suffer, to prostrate himself before the powers that be. For all Maistre's "paradoxes" and "descents into sheer counter-revolutionary absurdity," he was able, Berlin contended, to look unflinchingly at what "humane and optimistic persons tend not to want to see," and for this reason he was often "a better guide to human conduct" than the starry-eyed reformers: "at any rate [he] can provide a sharp, by no means useless, antidote to their often over-simple, superficial and, more than once, disastrous remedies."

Particularly valuable, Berlin believed, were Maistre's insights into the moral vocabulary of civilizations, the "accumulated wealth of meaning" with which the "mere passage of time enriches an old language, endowing it with all the fine, mysterious properties of an ancient, enduring institution." For Maistre, "thought *is* language," and language "enshrines the oldest historical memories of a people or a church." Maistre understood that a civilization's, a culture's, literature contains an inheritance of knowledge deeper than the reach of mere philosophy, particularly Enlightenment philosophy. "Since words are the repository of the thought and feeling and view of themselves and of the external world of our ancestors, they embody also their conscious and unconscious wisdom, derived from God to form experience," Berlin wrote in his précis of Maistre. "Hence ancient and traditional texts, especially those contained in sacred books which express the immemorial wisdom of the race, modified and enriched by the impact of events, are so many valuable quarries whence expert knowledge, zeal and patience may extract much hidden gold."

To cast aside this moral poetry was, for Maistre, "suicidal lunacy." Yet this is precisely what liberal reformers were continually doing (and what the deconstructionist academy does today). The reformer "annihilates" the "virtue" of the old texts and "dehydrates them of their significance," leaving what is "profound and fertile" in them to evaporate.

If Berlin found much truth in Maistre's critique of liberalism, he was careful to keep the Savoyard at arm's length. He connected Maistre to "the paranoiac world of modern Fascism," yet a number of what he characterizes as the philosopher's "dark" insights into history, suffering, and "the expiation of sin" resemble nothing so much as the views of Lincoln in the Second Inaugural, in which the sixteenth president cloaked himself in the language of the Bible and invoked "the providence of God" to explain America's dark and bloody experience of slavery and civil war. The Maistre Berlin gives us—"consumed by the sense of original sin," fearful lest men, in their "self-destructive stupidity," fall yet again into "the bottomless abyss of anarchy and the destruction of all values"—sounds less like a proto-Nazi than a prophet warning against those weaknesses in human nature that make a regime like Hitler's possible. Nor did Berlin explain why this staunchly Catholic philosopher and ultramontane champion of the pope—a man who felt himself to be "the last defender of a civilization that was perishing"—ought to be considered the begetter of Goebbels and Mussolini. Berlin's hastily sketched contention that "modern totalitarian systems . . . combine the outlooks of Voltaire and Maistre" rings hollow; it is his eloquent appreciation of Maistre's profundity that rings true.

Berlin portrayed himself as a value-pluralist, yet his essays on value-pluralism—"Two Concepts of Liberty," "Political Ideas in the Twentieth Century," "Does Political Theory Still Exist?"—contain what is surely his worst writing. They are repetitive, shaggy, shapeless, filled with labored sentences and tortuous digressions. By contrast, his essays on imaginative anti-liberals are alive with the exuberance of discovery. This chasm at the heart of his work—the divide between decent (but uninspiring) value-pluralism and exhilarating (but dangerous) idealism—he seems not consciously to have perceived; certainly he never pretended to have bridged it.

But there are clues. In his essay on Mill, Berlin described how that divided philosopher rebelled against liberal utilitarianism—the Mill family business—to pursue a deeper culture of the mind. Mill's "unceasing revolt against his father's outlook and ideals," Berlin wrote, was the "greater for being subterranean and unacknowledged." The same can be said of Berlin's subterranean revolt against what is unintelligent in liberalism. In his work on romantic anti-liberals, Berlin wrote sympathetically of all that is lacking in the liberal imagination: an acknowledgment of the importance of poetry and tradition, an understanding of evil, a feeling for the moral imagination, a recognition of man's need for the inspiration of an ideal.

Berlin's critique of liberalism was subterranean in part, I suppose, because he had no desire to be a prophet without invitations. Value-pluralism made Berlin a celebrity philosopher, a yogi to the postwar Anglo-American political establishment. Supple, plastic, flexible, Berlin's value-pluralism was congenial to the spirit of an age, a moment when the West lost confidence in its traditions and sought a precarious refuge in accommodation, in moral détente, in the ethically elastic. Berlin rushed from Rothschild house parties at Waddesdon to the soirées of Joe Alsop in Georgetown; he tutored the Kennedys at the White House and rushed off with the Arthur Schlesingers and the Walter Lippmanns to the Plaza, where Truman Capote was tossing his garter to Kay Graham.

Like his establishment patrons, Berlin feared extremism on the Left, yet was not a sufficiently confident liberal to dismiss socialism altogether. Rather than swim "against the current," he crafted an apologia for the welfare state and slighted the moral imagination—an admittedly imperfect defense against fanaticism, but the best we have. He attempted to throw over his papier-mâché philosophy the veil of the tragic, but he is least plausible when he poses as a tragic sage. How could one immersed in *lacrimae rerum* have steeled himself to so many dinner parties? (Perhaps his mornings were Sophoclean, leaving the evenings free for Fellini.) Yet in his most perceptive moments he was better than this, was a man who kept, however slyly, a nobler faith. ▪

Oh, to be in England

A Prophetic and Violent Masterpiece

Theodore Dalrymple

Anthony Burgess's *A Clockwork Orange* saw the English dystopia to come.

When, as a medical student, I emerged from the cinema having watched Stanley Kubrick's controversial film of *A Clockwork Orange*, I was astonished and horrified to see a group of young men outside dressed up as droogs, the story's adolescent thugs who delighted in what they called "ultra-violence."

The film had been controversial in Britain; its detractors, who wanted it banned, charged that it glamorized and thereby promoted violence. The young men dressed as droogs seemed to confirm the charge, though of course it is one thing to imitate a form of dress and quite another to imitate behavior. Still, even a merely sartorial identification with psychopathic violence shocked me, for it implied an imaginative sympathy with such violence; and seeing those young men outside the theater was my first intimation that art, literature, and ideas might have profound—and not necessarily favorable—social consequences. A year later, a group of young men raped a 17-year-old girl in Britain as they sang "Singing in the Rain," a real-life replay of one of the film's most notorious scenes.

The author of the book, Anthony Burgess, a polymath who once wrote five novels in a year, came to dislike this particular work intensely, not because of any practical harm to society that the film version of it might have caused but because he did not want to go down in literary history as the author of a book made famous, or notorious, by a movie. Irrespective of the value of his other work, however, *A Clockwork Orange* remains a novel of immense power. Linguistically inventive, socially prophetic, and philosophically profound, it comes very close to being a work of genius.

The story, set in the England of the near future (the book was published in 1962), is simple. The narrator, Alex, a precocious 15-year-old psychopath who has no feeling for others, leads a small gang in many acts of gratuitous, and much enjoyed, violence. Eventually, caught after a murder, he goes to prison, where—after another murder—the authorities offer to release him if he submits to a form of aversive conditioning against violence called the Ludovico Method. On his release, however, he attempts suicide by jumping out of a window, receiving a head injury that undoes his conditioning against violence. Once more he becomes the leader of a gang.

In the final chapter of the book's British version, Alex again rejects violence, this time because he discovers within himself, spontaneously, a source of human tenderness that makes him want to settle down and have a baby. In the American edition—which Stanley Kubrick used—this last chapter is missing: Alex is not redeemed a second time, but returns, apparently once and for all, to the enjoyment of arbitrary and antisocial violence. In this instance, it is the British who were the optimists and the Americans the pessimists: Burgess's American publisher, wanting the book to end unhappily, omitted the last chapter.

Burgess had been a schoolteacher (like William Golding, author of *Lord of the Flies*) and evidently sensed a stirring of revolt among the youth of his country and elsewhere in the West, a revolt with which—as a deeply unconventional man who felt himself to be an outsider however wealthy or famous he became, and who drank deep at the well of resentment as well as of spirituous liquors—he felt some sympathy and might even have helped in a small way to foment. And yet, as a man who was also deeply steeped in literary culture and tradition, he

BETTMANN/CORBIS (2)

Malcolm McDowell stars as Alex in Stanley Kubrick's film of *A Clockwork Orange*.

understood the importance of the shift of cultural authority from the old to the young and was very far from sanguine about its effects. He thought that the shift would lead to a hell on earth and the destruction of all that he valued.

He marks the separateness of his novel's young protagonists from their elders by their adoption of a new argot, as well as a new form of dress. Vital for groups antagonistic toward the dominant society around them, such argots allow them to identify and communicate with insiders and exclude outsiders. Although I worked in a prison for 14 years, for example, I never came to understand the language that prisoners used as they shouted to one another across landings and between buildings. It was their means of resisting domination. In the French *banlieues, les jeunes* use an argot derived from words spelled and pronounced backward—and completely incomprehensible to educated speakers of French. People of Jamaican descent in Britain use a patois when they want not to be understood by anyone else. The connection between argot and criminal purposes has long been close, of course; and the importance that Burgess ascribes to the new argot in *A Clockwork Orange* suggests that he saw youthful revolt as an expression more of self-indulgence and criminality than of idealism—the latter, shallower view becoming orthodoxy among intellectuals not long after *A Clockwork Orange* appeared.

Burgess's creation of a completely convincing new argot more or less ex nihilo is an extraordinary achievement. *Nadsat* (Russian for "teen"), as its speakers call it, is a mixture of anglicized Russian words—particularly provocative at the height of the cold war—and Cockney rhyming slang. As a linguistic invention, it is the equal of Orwell's Newspeak.

Alex, the narrator, though cold-blooded and self-centered, is intelligent and expresses himself with great force. A vocabulary that is entirely new and incomprehensible at the beginning of the book becomes so thoroughly familiar to the reader at the end that he forgets that he has ever had to learn its meaning: it seems completely natural after only a hundred pages. On the very first page, when Alex describes his gang's intention to do a robbery, he says:

> [T]here was no real need . . . of crasting [robbing] any more pretty polly [money] to tolchock [hit] some old veck [man] in an alley and viddy [see] him swim in his blood while we counted the takings and divided by four,

> nor to do the ultra-violent on some shivering starry [old] grey-haired ptitsa [woman] in a shop and go smecking [laughing] off with the till's guts.

Of course, the lack of real "need" does not prevent Alex and his gang from robbing in a cruel and violent way, for their cruelty and violence is an end in itself, joyfully engaged in. Not for Burgess was the orthodox liberal view that economic deprivation and lack of opportunity cause crime.

The gang's solipsistic and dehumanizing argot reflects this cold-bloodedness. Sexual intercourse, for example, becomes "the old in-out-in-out," a term without reference to the other participant, who is merely an object. The gang attacks a schoolteacher carrying books home from the library, for no reason other than a free-floating malevolence and joy in cruelty:

> Pete held his rookers [hands] and Georgie sort of hooked his rot [mouth] wide open for him and Dim yanked out his false zoobies [teeth], upper and lower. He threw these down on the pavement and then I treated them to the old boot-crush, though they were hard bastards like. . . . The old veck [man] began to make sort of chumbling shooms [sounds]—"wuf waf wof"—so Georgie let go of holding his goobers [jaws] apart and just let him have one in the toothless rot with his ringy fist, and that made the old veck start moaning a lot then, then out comes the blood, my brothers, real beautiful.

I doubt that a lack of feeling for others has ever been expressed more powerfully.

Burgess intuited with almost prophetic acuity both the nature and characteristics of youth culture when left to its own devices, and the kind of society that might result when that culture became predominant. For example, adults grow afraid of the young and defer to them, something that has certainly come to pass in Britain, where adults now routinely look away as youngsters commit antisocial acts in public, for fear of being knifed if they do otherwise, and mothers anxiously and deferentially ask their petulant five-year-old children what they would like to eat, in the hope of averting tantrums. The result is that adolescents and young men take any refusal of a request as lèse-majesté, a challenge to the integrity of their ego. When I refused to prescribe medicine that young men wanted but that I thought they did not need, they would sometimes answer in aggrieved disbelief, "No? What do you mean, no?" It was not a familiar concept. And in a sense, my refusal was pointless, insofar as any such young man would soon enough find a doctor whom he could intimidate into prescribing what he wanted. Burgess would not have been surprised by this state of affairs: he saw it coming.

When Alex and his gang enter a pub—they are underage, but no one dares challenge them—they spread fear by their mere presence.

> Now we were the very good malchicks [boys], smiling good evensong to one and all, though these wrinkled old lighters [people] started to get all shook, their veiny old rookers all trembling round their glasses, and making the suds [drink] spill on the table. "Leave us be, lads," said one of them, her face all mappy with being a thousand years old, "we're only poor old women."

Intimidation of the aged and contempt for age itself are an essential part of the youth culture: no wonder aging rock stars are eternal adolescents, wrinkled and arthritic but trapped in the poses of youth. Age for them means nothing but indignity.

Alex's parents (one of the things Burgess didn't foresee is the rise of the single-parent family) are afraid of him. He comes home late and plays his music very loud, but "Pee and em [Father and Mother] . . . had learnt now not to knock on the wall with complaints of what they called noise. I had taught them. Now they would take sleep-pills."

When Alex's father wants to know what he does at night—

Alex is only 15—he is apologetic and deferential: "'Not that I want to pry, son, but where exactly is it you go to work of evenings?' . . . My dad was like humble mumble chumble. 'Sorry, son,' he said. 'But I get worried sometimes.'"

When in a symbolic reversal of the direction of authority Alex offers his father some money (robbed, of course) so that he can buy himself a drink in the pub, his father says: "Thanks, son. . . . But we don't go out much now. We daren't go out much, the streets being what they are. Young hooligans and so on. Still, thanks."

In 1962, the idea that the young would someday impose upon old people in Britain a de facto after-dark curfew was still unimaginable, but Burgess, seeing the cloud no bigger than a man's hand on the horizon, imagined that outcome very vividly. With a prophet's imagination, he saw what would happen when the cloud grew until it covered the sky.

With like prescience, Burgess foresaw many other aspects of the youth culture to come: the importance that mind-altering drugs and an industrialized pop music would play in it, for example. (Burgess did not, however, suggest that high culture was necessarily ennobling in itself. Alex, much superior in intelligence to his followers, is a devotee of classical music, listening to which, however, increases his urge to commit violence. No doubt Burgess had in mind those Nazis who could listen with emotion to Schubert lieder after a hard day's genocide.)

Burgess foresaw the importance that the youth culture would attach to sexual precocity and a kind of disabused knowingness. In a remarkable rape scene, Alex meets two ten-year-old girls who, like him, are skipping school, in a record shop, where they are listening to pop music with suggestive titles such as "Night after Day after Night."

> They saw themselves, you could see, as real grown-up devotchkas [girls] already, what with the old hipswing when they saw your Faithful Narrator, brothers, and padded groodies [breasts] and red all ploshed on their goobers [lips]. . . . [T]hey viddied [saw] themselves as real sophistoes. . . . They had the same ideas or lack of, and the same colour hair—a like dyed strawy. Well, they would grow up real today. . . . No school this afterlunch, but education certain, Alex as teacher.

Their education that afternoon consists of repeated rape by an already experienced 15-year-old.

It would not have surprised Burgess that magazines for ten- or 11-year-old girls are now full of advice about how to make themselves sexually attractive, that girls of six or seven are dressed by their single mothers in costumes redolent of prostitution, or that there has been a compression of generations, so that friendships are possible between 14- and 26-year-olds. The precocity necessary to avoid humiliation by peers prevents young people from maturing further and leaves them in a state of petrified adolescence. Persuaded that they already know all that is necessary, they are disabused about everything, for fear of appearing naive. With no deeper interests, they are prey to gusts of hysterical and childish enthusiasm; only increasingly extreme sensation can arouse them from their mental torpor. Hence the epidemic of self-destructiveness that has followed in the wake of the youth culture.

The world in which youth culture predominates and precocity is the highest achievement is one in which all tenderness is absent. When Alex and his gang attack the teacher, they find a letter in his pocket, which one of them reads out derisively: "My darling one . . . I shall be thinking of you while you are away and hope you will remember to wrap up warm when you go out at night."

Such simple and heartfelt affection and concern for another person are extinct in the world of Alex and his droogs. Alex is incapable of putting himself in the place of anyone else, of "changing places in fancy with the sufferer," as Adam Smith puts it. Self-absorbed, he is self-pitying but has no pity for others. When he is arrested after the brutal murder of an old woman, he calls the policemen who have arrested him "bullies" and accuses them when they laugh at him of "the heighth of . . . callousness." Alex is quite incapable of connecting his own savage behavior with the words that he applies to the police. I was reminded of a case of murder in which I gave testimony recently: the young murderer kicked his girlfriend's head so hard that he broke her jaw in many places and forced her tongue through the back of her throat, and her stomach filled with blood—and a neighbor heard him laugh as he kicked. A policeman, after listening to his lies and evasions for two days, accused him of having no remorse for his deed. "You 'ave no feelings," the murderer rejoined. "I pity your poor wife"—just like Alex in *A Clockwork Orange*, but without the intelligence and the taste for classical music.

In the world of Alex and his droogs, all relations with other human beings are instrumental means to a selfish, brutal, hedonistic end. And this is the world that so many of my patients now inhabit, a world in which perhaps a third of the British population lives. It is also the world in which having a baby is the fulfillment of a personal human right, and nothing else.

But Burgess was not merely a social and cultural prophet. *A Clockwork Orange* grapples as well with the question of the origin and nature of good and evil. The Ludovico Method that Alex undergoes in prison as a means of turning him into a model citizen in exchange for his release is in essence a form of conditioning. Injected with a drug that induces nausea, Alex must then watch films of the kind of violence that he himself committed, his head and eyelids held so that he cannot escape the images by looking away from them—all this to the piped-in accompaniment of the classical music that he loves. Before long, such violence, either in imagery or in reality, as well as the sound of classical music, causes him nausea and vomiting even without the injection, as a conditioned response. Alex learns to turn the other cheek, as a Christian should: when he is insulted, threatened, or even struck, he does not retaliate. After the treatment—at least, until he suffers his head injury—he can do no other.

Two scientists, Drs. Branom and Brodsky, are in charge of the "treatment." The minister of the interior, responsible for cutting crime in a society now besieged by the youth culture, says: "The Government cannot be concerned any longer with outmoded penological theories . . . . Common criminals . . . can best be dealt with on a purely curative basis. Kill the criminal reflex, that's all." In other words, a criminal or violent act is, in essence, no different from the act of a rat in a cage, who presses a lever in order to obtain a pellet of food. If you shock the rat with electricity when it presses the lever instead of rewarding it with food, it will soon cease to press the lever. Criminality can be dealt with, or "cured," in the same way.

At the time that Burgess wrote *A Clockwork Orange*, doctors were trying to "cure" homosexuals by injecting them with apomorphine, a nausea-inducing drug, while showing them pictures of male nudes. And overwhelmingly, the dominant school of psychology worldwide at the time was the behaviorism of Harvard prof B. F. Skinner. His was what one might call a "black box" psychology: scientists measured the stimulus and the response but exhibited no interest whatsoever in what happened between the two, as being intrinsically immeasurable and therefore unknowable. While Skinner might have quibbled about the details of the Ludovico Method (for example, that Alex got the injection at the wrong time in relation to the violent films that he had to watch), he would not have rejected its scientific—or rather scientistic—philosophy.

In 1971, the very year in which the Kubrick film of *A Clockwork Orange* was released, Skinner published a book entitled *Beyond Freedom and Dignity*. He sneered at the possibility that reflection upon our own personal experience and on history might be a valuable source of guidance to us in our attempts to govern

Shocked by its violence, as in this rape scene, British viewers wanted the film banned.

our lives. "What we need," he wrote, "is a technology of behavior." Fortunately, one was at hand. "A technology of operant behavior is . . . already well advanced, and it may prove commensurate with our problems." As he put it, "[a] scientific analysis shifts the credit as well as the blame [for a man's behavior] to the environment." What goes on in a man's mind is quite irrelevant; indeed, "mind," says Skinner, is "an explanatory fiction."

For Skinner, being good is behaving well; and whether a man behaves well or badly depends solely upon the schedule of reinforcement that he has experienced in the past, not upon anything that goes on in his mind. It follows that there is no new situation in a man's life that requires conscious reflection if he is to resolve the dilemma or make the choices that the new situation poses: for everything is merely a replay of the past, generalized to meet the new situation.

The Ludovico Method, then, was not a far-fetched invention of Burgess's but a simplified version—perhaps a reductio ad absurdum, or ad nauseam—of the technique for solving all human problems that the dominant school of psychology at the time suggested.

Burgess was a lapsed Catholic, but he remained deeply influenced by Catholic thought throughout his life. The Skinnerian view of man appalled him. He thought that a human being whose behavior was simply the expression of conditioned responses was not fully human but an automaton. If he did the right thing merely in the way that Pavlov's dog salivated at the sound of a bell, he could not be a good man: indeed, if all his behavior was determined in the same way, he was hardly a man at all. A good man, in Burgess's view, had to have the ability to do evil as well as good, an ability that he would voluntarily restrain, at whatever disadvantage to himself.

Being a novelist rather than an essayist, however, and a man of many equivocations, Burgess put these thoughts in *A Clockwork Orange* into the mouth of a ridiculous figure, the prison chaplain, who objects to the Ludovico Method—but not enough to resign his position, for he is eager to advance in what Alex calls "Prison religion." Burgess puts the defense of the traditional view of morality as requiring the exercise of free will—the view that there is no good act without the possibility of a bad one—into the mouth of a careerist.

The two endings of *A Clockwork Orange*—the one that Burgess himself wrote and the truncated one that his American publisher wanted and that Kubrick used for his film—have very different meanings.

According to the American-Kubrick version, Alex resumes his life as violent gang leader after his head injury undoes the influence of the Ludovico Method. He returns to what he was before, once more able to listen to classical music (Beethoven's Ninth) and fantasize violence without any conditioned nausea:

> Oh, it was gorgeosity and yumyumyum. When it came to the Scherzo I could viddy myself very clear running and running on like very light and mysterious nogas [feet], carving the whole litso [face] of the creeching [screaming] world with my cut-throat britva [razor]. And there was the slow movement and the lovely last singing movement still to come. I was cured all right.

Kubrick even suggests that this is a happy outcome: better an authentic psychopath than a conditioned, and therefore inauthentic, goody-goody. Authenticity and self-direction are thus made to be the highest goods, regardless of how they are expressed. And this, at least in Britain, has become a prevailing orthodoxy among the young. If, as I have done, you ask the aggressive young drunks who congregate by the thousand in every British town or city on a Saturday night why they do so, or British soccer fans why they conduct themselves so menacingly, they will reply that they are expressing themselves, as if there were nothing further to be said on the matter.

The full, British version of *A Clockwork Orange* ends very differently. Alex begins to lose his taste for violence spontaneously, when he sees a happy, normal couple in a café, one of whom is a former associate of his. Thereafter, Alex begins to imagine a different life for himself and to fantasize a life that includes tenderness:

> There was Your Humble Narrator Alex coming home from work to a good hot plate of dinner, and there was this ptitsa [girl] all welcoming and greeting like loving. . . . I had this sudden very strong idea that if I walked into the room next to this room where the fire was burning away and my hot dinner laid on the table, there I should find what I really wanted. . . . For in that other room in a cot was laying gurgling goo goo goo my son. . . . I knew what was happening, O my brothers. I was like growing up.

Burgess obviously prefers a reformation that comes spontaneously from within, as it does in the last chapter, to one that comes from without, by application of the Ludovico Method. Here he would agree with Kubrick—an internal reformation is more authentic, and thus better in itself because a true expression of the individual. Perhaps Burgess also believes that such an internal reformation is likely to go deeper and be less susceptible to sudden reversal than reformation brought from outside.

Burgess also suggests the somewhat comforting message, at odds with all that has gone before, that Alex's violence is nothing new in the world and that the transformation of immature, violent, and solipsistic young men into mature, peaceful, and considerate older men will continue forever, as it has done in the past, because deep inside there is a well of goodness, man having been born with original virtue rather than original sin (this is the Pelagian heresy, to which Burgess admitted that he was attracted). There is a never-ending cycle:

> [Y]outh is only being in a way like it might be an animal. No, it is not just like being an animal so much as being like one of these malenky [small] toys you viddy being sold in the streets, like little chellovecks [men] made out of tin and with a spring inside and then a winding handle on the outside and you wind it up grrr grrr grrr and off it itties [goes], like walking, O my brothers. But it itties in a straight line and bangs straight into things bang bang and it cannot help what it is doing. Being young is like being like one of these malenky machines.
>
> My son, my son. When I had my son I would explain all that to him when he was starry [old] enough to like understand. But then I knew he would not understand or would not want to understand at all and would do all the veshches [things] I had done . . . and I would not be able to really stop him. And nor would he be able to stop his own son, brothers. And so it would itty on to like the end of the world.

And this, surely, is partly right. Four centuries ago, Shakespeare wrote:

> I would there were no age between sixteen and three-and-twenty, or that youth would sleep out the rest; for there is nothing in the between but getting wenches with child, wronging the ancientry, stealing, fighting.

And certainly it is true that criminality, statistically speaking, is an activity of the young and that there are few prisoners in the prison in which I worked who had been incarcerated for a crime committed after age 35. There seems to be a biological dimension to common-or-garden wrongdoing.

But a quietistic message—cheerful insofar as it implies that violence among young men is but a passing phase of their life and that the current era is no worse in this respect than any past age, and pessimistic in the sense that a reduction of the overall level of violence is impossible—is greatly at odds with the socially prophetic aspect of the book, which repeatedly warns that the coming new youth culture, shallow and worthless, will be unprecedentedly violent and antisocial. And of Britain, at least, Burgess was certainly right. He extrapolated from what he saw in the prime manifestation of the emerging youth culture, pop music, to a future in which self-control had shrunk to vanishing, and he realized that the result could only be a Hobbesian world, in which personal and childish whim was the only authority to guide action. Like all prophets, he extrapolated to the nth degree; but a brief residence in a British slum should persuade anyone that he was not altogether wide of the mark.

A *Clockwork Orange* is not completely coherent. If youth is violent because the young are like "malenky machines" who cannot help themselves, what becomes of the free will that Burgess otherwise saw as the precondition of morality? Do people grow into free will from a state of automatism, and, if so, how and when? And if violence is only a passing phase, why should the youth of one age be much more violent than the youth of another? How do we achieve goodness, both on an individual and social level, without resort to the crude behaviorism of the Ludovico Method or any other form of cruelty? Can we bypass consciousness and reflection in our struggle to behave well?

There are no schematic answers in the book. One cannot condemn a novel of 150 pages for failing to answer some of the most difficult and puzzling questions of human existence, but one can praise it for raising them in a peculiarly profound manner and forcing us to think about them. To have combined this with acute social prophecy (to say nothing of entertainment) is genius. ■

Letters

Diplomatic Impunity

To the editor:

I write in response to Heather Mac Donald's article "Mexico's Undiplomatic Diplomats" [Autumn 2005]. I would like to stress my deep concern regarding its misrepresentation of both the nature and the purpose of Mexico's policies toward Mexican nationals living in the United States.

In no way is the Mexican government trying to "get [migrants] into the United States in violation of American law," as Mac Donald states. By publishing documents such as the *Guía del Migrante*, Mexican authorities are solely seeking to prevent the more than 350 tragic deaths that occur at the border every year, and to provide information about the risks of crossing the border illegally or residing in the United States without the required documentation.

By promoting the use and acceptance of consular IDs, a practice recognized by the Vienna Convention and exercised by most countries, including the United States, Mexico does not seek to interfere in the internal affairs of the U.S. Far from the deceiving characterization as "subversive" used in the article, a consular ID does not alter a person's migratory status; it merely states that an individual is a Mexican national and provides his address in the U.S. American local authorities, financial institutions, and police departments have acknowledged consular IDs as an asset in a post-9/11 world.

U. S. POST OFFICE, NEW YORK

THE NEW-YORK HISTORICAL SOCIETY, NEGATIVE #78257D

One of the most significant achievements of President Vicente Fox's administration has been its concern for Mexicans living and working abroad. This cornerstone of our foreign policy is a source of pride for our country and is a regulated and established practice in international affairs. But I firmly believe in drawing a clear distinction between such protection, which Mexican consuls throughout the world have tirelessly worked for, and unacceptable interference with internal issues, which the Mexican government does not accept or promote.

Gerónimo Gutiérrez
Undersecretary for North America
Ministry of Foreign Affairs, Mexico

To the editor:

Heather Mac Donald argues that I am objecting to the application of local and state regulations such as housing and fire codes on Long Island. In my statements regarding the eviction of day laborers from overcrowded houses in Suffolk County, I have repeatedly emphasized that I do not question the local authorities' right and obligation to ensure that landlords and tenants comply with housing regulations. What I have stated is that Suffolk County authorities are engaged in a selective application and enforcement of those regulations in what is clearly a campaign against day laborers in that county and a violation of their human rights.

Arturo Sarukhan
Consul General of Mexico in New York

To the editor:

As a retired diplomat who was posted in Guadalajara for two years, I can tell you that any American diplomat in Mexico who conducted himself in the manner you describe would

Letters

almost certainly have been labeled persona non grata and expelled by the Mexican government. More important, nearly any American diplomat would consider such behavior grossly unprofessional, highly improper, and a violation of his status in the country.

Ray Caldwell
Via e-mail

Heather Mac Donald responds:

I have no doubt that Mexico is trying to prevent crossing deaths by publishing the *Guía del Migrante.* Such a motive is not the same, however, as trying to prevent the crossings themselves. Were Mexico serious about that, it could start enforcing its own laws against illegal exits from the country. It could stop providing safe escort through the desert to illegal crossers. It could stop giving advice to would-be illegal crossers on how to breach the borders safely and avoid detection once here. It could send an unequivocal message that Mexican citizens have no right to violate U.S. laws and that doing so hurts Mexico's relationship with its neighbor to the north. Most radically, it could dismantle its wasteful public sector, which sucks so much vibrancy out of the Mexican economy, and promote free-market reforms.

Undersecretary Gutiérrez objects to my characterization of the matricula consular campaign as "subversive." Perhaps he would prefer "militant," which is how Mexico's former foreign secretary, Jorge Castañeda, described it. Mr. Castañeda understood quite well that this unprecedented effort to persuade American authorities to recognize the card has one purpose only: to further normalize the status of illegal Mexican aliens within the U.S.

The undersecretary believes that "interference with internal issues" is "unacceptable" for consuls. That is welcome news. He might instruct them to stop denouncing the enforcement of American laws; the consul general in New York, Arturo Sarukhan, would be a good place to start. Mr. Sarukhan claims that he was protesting only the "selective enforcement" of fire and housing codes when Suffolk County officials shut down three houses, containing a total of over 100 occupants, last July. But Mr. Sarukhan provides no evidence that the authorities are ignoring similarly overcrowded housing containing legal residents. Until he does, his charge of biased enforcement will look like window dressing for his real complaint: that the enforcement of neutral laws that have a disproportionate impact on illegal Mexicans is, as he puts it, a "violation of their human rights."

Call It Overtime

To the editor:

Steven Malanga's piece ["The Conspiracy Against the Taxpayers," Autumn 2005] was a superb documentation of a horrific situation. Consider a follow-up piece on the numbers of public-sector employees who are also members of state legislatures. Most state legislatures are part time. In my state, Washington, about 75 percent of all members of the legislature are also current public employees, retired public employees, members of public-employee families, or contractors for public funds. Within the Democratic Party, this figure is close to 100 percent.

The Speaker of the House here leads a home-health-care organization, for example, and led the successful effort to include home-health-care workers in collective bargaining units. The Democratic Party actively recruits public employees to run for office. The presence of public employees in the legislature, in overpowering numbers, turns the legislative branch of government into an arm of an expanding executive branch.

In addition, the absence of ordinary taxpayer representation—and experience—permits lawmakers to ignore private-sector impacts. They simply have no experience in the private sector, which is, of course, the bank for their activities. What we have here is an enormous transfer of wealth from the private sector, particularly the working class and lower middle class, to the increasingly wealthy public sector.

Sue Robinson
Camano Island, WA

To the editor:

Houstonians have done something about the problem that Steven Malanga describes. In November 2004 we passed Proposition 2, which requires that in any year that the city council wishes to increase total city revenues and expenditures

Letters

(including debt service) more than the combined rate of increase in population and inflation, it must first obtain 60 percent voter approval.

Bob Lemer
Author of Proposition 2
Houston, TX

Big Danger in the Big Easy

To the editor:

Normally, I try not to read outsiders' views of what is going on in New Orleans. It's amazing how far off the mark they can be. But Nicole Gelinas's article "Who's Killing New Orleans?" [Autumn 2005] hits the bull's-eye. Its details about New Orleans are insightful and accurate.

The police believe that they can now keep the murder numbers low. Those of us who know and love the city don't share their confidence. Without some kind of intervention, the city will never flourish again.

Eileen Engel
Hammond, LA

To the editor:

I support Nicole Gelinas's recommendations of a protected zone in New Orleans to secure its citizens, and of local accountability regarding any federal funding.

Before Katrina, I was an owner of a software company with about ten employees in New Orleans—most of whom have since vacated to our Florida office. Today, I am a member of a local vigilante group that has attempted to provide some level of security in the absence of police protection.

New Orleans has a well-founded reputation for corruption in government. The entrenched political establishment has had an interest in maintaining an undereducated, underpaid, entitlement-dependent, easily malleable, and predominantly black lower class. My company is disinclined to return to a city with a permanent underclass, with all the personal safety issues discussed in Ms. Gelinas's article.

John Ryan
New Orleans, LA

To the editor:

It's wrong for Nicole Gelinas to criticize New Orleans, my hometown. I now live in Detroit, which is much worse. For the last five years, Detroit's violent-crime rate has been almost double that of New Orleans, and it was rated the most dangerous big city this year.

Also, since Gelinas says that New Orleans has more murders per capita than New York, she should also say that East St. Louis, Illinois, and Highland Park, Michigan, have more murders per capita than New Orleans. Those cities aren't put on many lists because they have fewer than 100,000 residents, but if you can compare New Orleans with New York, which is 16 times larger, then you also need to compare it with cities that are 16 times smaller.

Mark Dargin
Detroit, MI

Nicole Gelinas responds:

Detroit's overall violent-crime rate is indeed higher than New Orleans's. However, as I noted in my article, New Orleans's specialty before Katrina was murder. In 2004, New Orleans's per-capita murder rate was 56 per 100,000 inhabitants; Detroit's was 42.

Neither the FBI nor the Department of Housing and Urban Development, which reliably track crime statistics, gives murder figures for East St. Louis, only for the metropolitan region that includes its 30,000 inhabitants. That region records a murder rate of about eight per 100,000. And only HUD reports reliable statistics for Highland Park: over the six years for which recent data are available, this city of 17,000 has reported murder rates ranging from 53 to 101 per 100,000 inhabitants (the figures vary wildly from year to year because the city is so small).

I would agree with Mr. Dargin that Highland Park is a dangerous place to live, more dangerous than pre-Katrina New Orleans. However, I do not agree that Highland Park can be compared with traditional urban areas like New Orleans and New York. Highland Park is surrounded by, and dependent on, Detroit, with no real economy of its own; New York and New Orleans are historically independent cities with the diverse industrial, economic, racial, educational, and cultural characteristics one expects to see in an urban environment.

CITY JOURNAL *welcomes letters to the editor.*
e-mail: letters@city-journal.org
fax: 212-599-0371

Contributors

Brian C. Anderson is senior editor of *City Journal* and the author of *Raymond Aron: The Recovery of the Political*. His current book is *South Park Conservatives: The Revolt Against Liberal Media Bias*.

Michael Knox Beran, a lawyer and writer, is a contributing editor of *City Journal* and the author of *Jefferson's Demons*. His previous book, *The Last Patrician*, was a *New York Times* Notable Book of 1998.

Theodore Dalrymple, a physician, is a contributing editor of *City Journal* and the Dietrich Weismann Fellow at the Manhattan Institute. His current book, *Our Culture, What's Left of It*, is the second collection of his *City Journal* essays.

Nicole Gelinas, a contributing editor of *City Journal*, was previously a business journalist for Thomson Financial. She also wrote an op-ed column for the *New York Post*. Gelinas is a Chartered Financial Analyst.

Robert P. George, the author of *In Defense of Natural Law* and *The Clash of Orthodoxies*, is McCormick Professor of Jurisprudence and director of the James Madison Program in American Ideals and Institutions at Princeton University. He is a member of the President's Council on Bioethics. His article is adapted from the Manhattan Institute's 2005 Wriston Lecture.

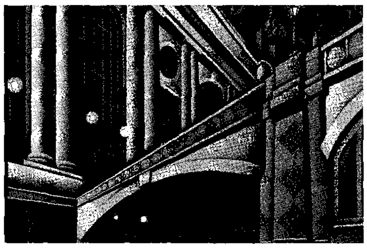
Howard Husock, a contributing editor of *City Journal*, is the author of *America's Trillion-Dollar Housing Mistake*. He is the director of case studies in public policy and management at Harvard University's Kennedy School of Government.

Kay S. Hymowitz, a contributing editor of *City Journal* and the William E. Simon Fellow at the Manhattan Institute, is the author of *Liberation's Children* and *Ready or Not*.

Heather Mac Donald is a contributing editor of *City Journal* and the John M. Olin Fellow at the Manhattan Institute. She is the author of *Are Cops Racist?* and *The Burden of Bad Ideas*.

Steven Malanga is a contributing editor of *City Journal* and a senior fellow at the Manhattan Institute. His current book, *The New New Left*, is a collection of his *City Journal* essays.

Sol Stern is a contributing editor of *City Journal* and the author of *Breaking Free: Public School Lessons and the Imperative of School Choice*.



Detail of *Pershing Square Bridge*, © 1993 Bascove. Reprinted from *Stone and Steel: Paintings and Writings Celebrating the Bridges of New York City* / Collection of the Museum of the City of New York

City Journal (ISSN 1060-8540) is published four times a year by the Manhattan Institute, 52 Vanderbilt Avenue, New York, NY 10017. Telephone: (212) 599-7000. Fax: (212) 599-0371. E-mail: cj@city-journal.org. Subscription rates: one year: $23.00; two years: $42.00; foreign subscriptions subject to $8-per-year postage surcharge; back issues: $8 (10 or more, $7 each); reprints: $3.00. Distributed in the United States by Bernard DeBoer, Inc., 113 East Centre Street, Nutley, NJ 07110, (973) 667-9300; Hudson News Company, 1305 Paterson Plank Road, North Bergen, NJ 07047, (201) 867-3600; Ingram Periodicals, 1240 Heil Quaker Blvd., LaVergne, TN 37086, (615) 793-5522; International Periodical Distributors, 674 Via de la Valle, Suite 200, Solano Beach, CA 92075, (619) 481-5928; Ubiquity Distributors, 607 DeGraw Street, Brooklyn, NY 11217, (718) 875-5491.

Please visit our website at www.city-journal.org.

Signed articles express the views of their authors and are intended solely to inform and broaden public debate. They are not intended to aid or hinder legislation before legislative bodies at the municipal, state, or federal level. © 2006 by the Manhattan Institute, Inc.

Autos-da-fé

Theodore Dalrymple

Driving through France as the riots continued, I found myself struck by the atmosphere not so much of crisis as of indifference. It was a case of out of sight, out of mind: life in the countryside and the center of towns and cities went on as if nothing untoward were happening nearby. Perhaps everyone was quietly confident that, if worst came to worst, and *les jeunes* attempted to leave their housing projects for fancier urban areas, the forces of law and order could contain them—that is, beat them to a pulp.

As we dined one night in an excellent restaurant in the beautiful Alsatian city of Colmar, a few of *les jeunes* expressed their frustrations on the city outskirts by burning three of their neighbors' cars. Brought before the courts the next morning, and asked why they had done it, they offered no explanation.

I suspect they might well have been unable to do so. The frustrations of *les jeunes* are inchoate, and though they might mutter about lack of work, it is unlikely—after years of a drifting life on welfare, in which time is their own and they suffer no acute deprivations—that they would take with anything like alacrity to any unskilled job offered them. Certainly, I would not like to be a boss giving them orders. For them, the use of the imperative mood would indicate lack of respect, and become a *casus belli.*

The more the rioters rioted, the more cars they burned and the more *écoles maternelles* they wrecked, the higher rose the stock of the interior minister, Nicolas Sarkozy. His characterization of *les jeunes* as *racaille,* scum, proved especially popular. Polls now suggest that 70 percent of French adults would vote for him in a presidential election. Whether he has any solution, other than fierce repression when necessary, to the intractable social problem created by mass immigration from North Africa and the welfare state (to which the French remain fiercely attached), is an open question.

Driving to the Netherlands, I was surprised by how much the political atmosphere there had changed. Not long ago, the Dutch seemed insufferably complacent, regarding the rest of the world *de haut en bas,* as if it had not yet reached Dutch levels of enlightenment and generosity. It is amazing what a couple of assassinations can do. The Dutch are now the only people in Europe who are thinking, and thinking hard. It is as if they had awakened from a pleasant but unrealistic daydream.

To my amazement, the Dutch Ministry of Justice asked me to give a talk. The audience proved intelligent, respectful, but not supinely uncritical. Such a thing had never happened to me in my native Britain. Of course, the French riots were on Dutch minds. Could such a thing happen there? Probably not. For one thing, the Dutch had presciently demolished their high-rise housing projects a few years ago.

In the audience was a young immigrant who told me that he had relatives in the *banlieues* of French cities. A cousin had his car burned by *les jeunes,* but told him over the phone that if losing his car helped improve conditions in the *banlieues,* it would have been worth it.

I have no doubt that the young man reported accurately what his cousin said. In reply, however, I wondered whether the generous decision of French insurers to compensate the owners of the 9,000 burned cars, despite the fact that all policies exclude civil disturbance, had something to do with his cousin's broad-mindedness over his loss.

The insurers' decision amounts to a de facto tax on French drivers—unless the companies pay the compensation out of their profits, which seems unlikely. The message to the rioters, therefore, is: "You burn, they pay."

Had the insurers not compensated owners of burned cars, would the cousin have been less sympathetic to *les jeunes*? Would he have blamed them? Perhaps not. The human capacity for resentment being what it is, he would probably have blamed the hard-heartedness of the insurers, yet another instance of the rotten hand France had dealt out to immigrants, and another good reason to hate it. ▪

The finest in owner managed real estate properties and real estate brokerage.

At Atco, we believe that PEOPLE are our most valuable ASSET.

Atco Properties & Management, Inc. is owner and manager of commercial, industrial, residential and retail real estate in the New York and Phoenix areas, with more than seven decades of experience.

To us a lease is an ongoing partnership, not a one-time deal.

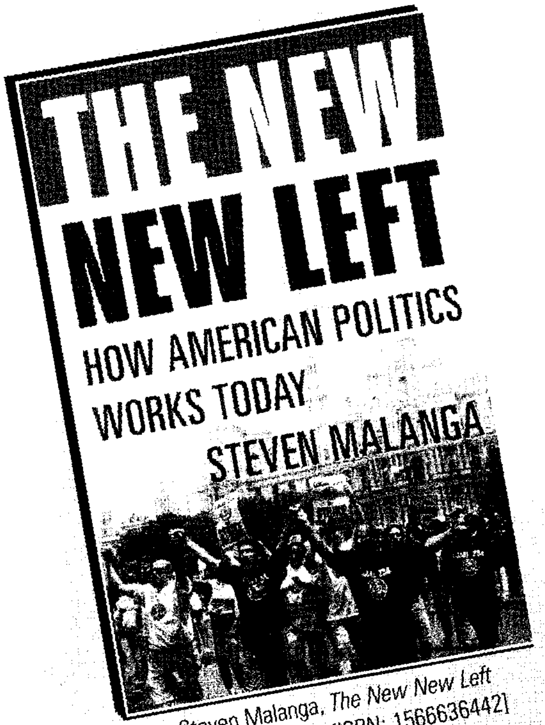
Tenants come to view Atco managers as an essential part of everyday operations. We are quick to respond and easy to access. And through close observation and valuable suggestions, we anticipate our clients' needs to help make their businesses flourish.

ATCO

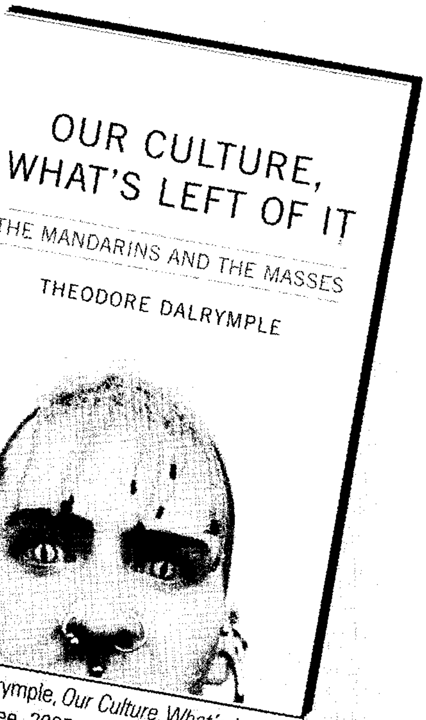
Properties and Management, Inc.

Headquarters:
555 Fifth Avenue
New York, New York, 10017
212-687-5154 Fax: 212-682-7599

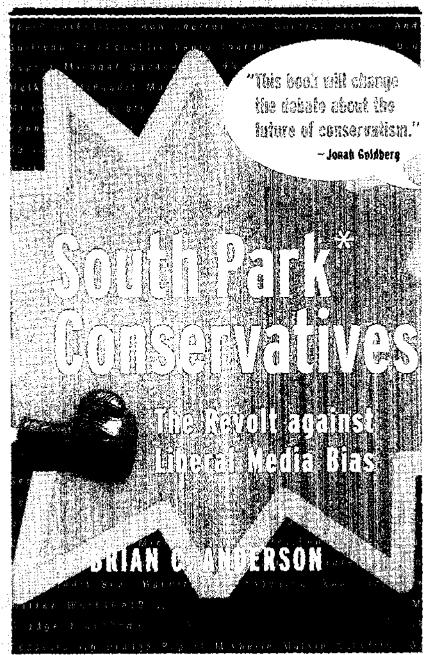
New books by *City Journal* authors


THE NEW
NEW LEFT
HOW AMERICAN POLITICS
WORKS TODAY
STEVEN MALANGA

Steven Malanga, *The New New Left*
Ivan R. Dee, 2005 [ISBN: 1566636442]
". . . guides us through America's
emerging new political reality."
-Amity Shlaes, *Financial Times*


OUR CULTURE,
WHAT'S LEFT OF IT
THE MANDARINS AND THE MASSES
THEODORE DALRYMPLE

Theodore Dalrymple, *Our Culture, What's Left of It*
Ivan R. Dee, 2005 [ISBN: 1566636434]
". . . the Orwell of our time."
-Denis Dutton, *Arts & Letters Daily*
". . . the Edmund Burke of our age . . . ."
-Roger Kimball, *The New Criterion*


"This book will change
the debate about the
future of conservatism."
– Jonah Goldberg
South Park*
Conservatives
The Revolt against
Liberal Media Bias
BRIAN C. ANDERSON

Brian C. Anderson, *South Park Conservatives*
Regnery, 2005 [ISBN: 0895260190]
"A first rate account. . . . I couldn't
recommend a better book on this subject."
-David Horowitz